

Indian Child Welfare Act (ICWA)

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Overview

“Child welfare practice with American Indian/Alaska Native (AI/AN) children and families has been shaped by the complicated history between the U.S. government and Tribes, both within and outside the context of child welfare.

The child welfare system has had a particularly poignant impact on tribal communities over the past century. From the 1870s through the 1930s, thousands of Indian children had to leave their homes, families, and Tribes and attend boarding schools, often at a great distance from home, where a policy of assimilation left them without access to family and unable to speak their native language or participate in their native culture. They left their homes without any investigation of maltreatment or well-being and without notice to their families or Tribes (Capacity Building Center [CBC] for States, 2017). Native customs and practices were destroyed, families were separated, and generations of AI/AN children grew to adulthood without the benefit of parenting or support from their families or Tribes.

Compounding the trauma associated with early child welfare practices is the overall treatment of native peoples by the U.S. government, particularly from the 1820s through the 1960s. From the 1820s to the 1880s, the U.S. government established practices of forced migration and placement of native peoples on reservations (CBC for States, 2017). From that point onward, U.S. government approaches to tribal populations included seeking to assimilate tribal members into mainstream American life; distributing reservation land to settlers, often without compensation to Tribes; and other policies that had serious and long-lasting negative consequences for Tribes. Although the U.S. government’s approach to working with Tribes has improved in recent decades, this distressing history has contributed to a great level of distrust, historical trauma, and unresolved grief that continues to affect AI/AN families and the ways in which Federal, State, and Local governments and Tribes interact.

The Federal government has implemented various pieces of legislation to attempt to address some of the inequities of the past, with the Indian Child Welfare Act (ICWA) (Public Law (P.L.) 95–608) being the key guidance on child welfare practice with AI/AN children and families. ICWA, passed in 1978, established Federal standards for the removal, placement, and termination of parental rights in order to protect the best interests of AI/AN children and keep them connected to their families and Tribes. ICWA also clarified the jurisdictions of State and Tribal governments in child welfare cases, authorized Tribal-State agreements, and provided funding for the development of tribal programs.”¹

¹ Child Welfare Information Gateway. (2018). *The Indian Child Welfare Act: A primer for child welfare professionals*. Washington, DC: U.S. Department of Health and Human Services, Children’s Bureau.

In addition to the Federal ICWA, Iowa enacted its own Indian Child Welfare Act (Iowa ICWA) in 2003 (Iowa Code Chapter 232B). Subsequent to the establishment of the Iowa ICWA, the Iowa Supreme Court ruled that the Iowa ICWA definition of Indian Child (Iowa Code Section 232B.3(6)) and placement preferences applicable to a voluntary termination of parental rights (Iowa Code Section 232B.9(6)) were unconstitutional. These same placement preferences are under the Iowa ICWA for emergency removal, foster, and pre-adoptive placements but the Iowa Supreme Court decision did not address these preferences. Staff will use the Federal ICWA definition of Indian Child and the Tribe's placement preferences for all placements.

"The purpose of the Iowa Indian child welfare Act is to clarify state policies and procedures regarding implementation of the federal Indian Child Welfare Act, Pub. L. No. 95-608, as codified in 25 U.S.C. ch. 21. It is the policy of the state to cooperate fully with Indian tribes and tribal citizens in Iowa in order to ensure that the intent and provisions of the federal Indian Child Welfare Act are enforced. This cooperation includes recognition by the state that Indian tribes have a continuing and compelling governmental interest in an Indian child whether or not the child is in the physical or legal custody of an Indian parent, Indian custodian, or an Indian extended family member at the commencement of a child custody proceeding or the child has resided or domiciled on an Indian reservation. **The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices...designed to prevent the child's voluntary or involuntary out-of-home placement and, whenever such placement is necessary or ordered, by placing the child, whenever possible, in a foster home, adoptive home, or other type of custodial placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.**"² [bold added for emphasis]

This chapter describes child welfare practice with AI/AN children, which reflect the Federal and Iowa ICWA requirements, including the U.S. Department of the Interior's Bureau of Indian Affairs latest guidance.

² Iowa Code Section 232B.2

Legal Basis

The legal bases of this chapter include:

- ◆ 25 United States Code (U.S.C.) §Section 1901 et seq.
- ◆ 25 Code of Federal Regulations (CFR) Part 23.
- ◆ Iowa Code Chapter 232B

Per 25 CFR 23.106, federal regulations set a minimal threshold for ICWA compliance. However, where a state enacts a higher standard of protection for parents and Indian custodians under ICWA, the state court and child welfare agency is required to apply that higher standard.

Definitions

Definitions in this chapter reflect either federal regulations (25 CFR 23.2) or Iowa statute (Iowa Code Section 232B.3), whichever is more descriptive and/or provides a higher standard of protection under ICWA.

“Active efforts” means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe.

Active efforts are to be tailored to the facts and circumstances of the case and may include, for example:

- ◆ Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
- ◆ Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
- ◆ Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;

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- ◆ Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;
 - ◆ Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's tribe;
 - ◆ Taking steps to keep siblings together whenever possible;
 - ◆ Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
 - ◆ Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;
 - ◆ Monitoring progress and participation in services;
 - ◆ Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;
 - ◆ Providing post-reunification services and monitoring. (25 CFR 23.2)

“Adoptive placement” means the permanent placement of an Indian child for adoption including, but not limited to, any action under Iowa Code Chapters 232, 600, or 600A resulting in a final decree of adoption. “Adoptive placement” does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child’s parents. (Iowa Code Section 232B.3(1))

“Agency” means a private State-licensed agency or public agency and their employees, agents or officials involved in and/or seeking to place a child in a child custody proceeding. (25 CFR 23.102)

“Best interest of the child” means the use of practices in accordance with the federal Indian Child Welfare Act, Iowa Code Chapter §232B, and other applicable law, that are designed to prevent the Indian child’s voluntary or involuntary out-of-home placement, and whenever such placement is necessary or ordered, placing the child, to the greatest extent possible, in a foster home, adoptive placement, or other type of custodial placement that reflects the unique values of the child’s tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child’s Tribe and tribal community. (Iowa Code Section 232B.3(2))

“Bureau of Indian Affairs (BIA)” means the Bureau of Indian Affairs, the Department of the Interior. (25 CFR 23.2)

“Child-custody proceeding” means and includes any action, other than an emergency proceeding, that may culminate in one of the following outcomes:

- ◆ Foster-care placement, which is any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or 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;
- ◆ Termination of parental rights, which is any action resulting in the termination of the parent-child relationship;
- ◆ Pre-adoptive placement, which is 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; or
- ◆ Adoptive placement, which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

An action that may culminate in one of these four outcomes is considered a separate child-custody proceeding from an action that may culminate in a different one of these four outcomes. There may be several child-custody proceedings involving any given Indian child. Within each child-custody proceeding, there may be several hearings. (25 CFR 23.2)

“Continued custody” means physical custody or legal custody or both, under any applicable Tribal law or Tribal custom or State law, that a parent or Indian custodian already has or had at any point in the past. The biological mother of a child has had custody of a child. (25 CFR 23.2)

“Custody” means physical custody or legal custody or both, under any applicable Tribal law or Tribal custom or State law. A party may demonstrate the existence of custody by looking to Tribal law or Tribal custom or State law. (25 CFR 23.2)

“Domicile” means:

- ◆ For a parent or Indian custodian, the place at which a person has been physically present and that the person regards as home; a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere.
- ◆ For an Indian child, the domicile of the Indian child’s parents or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child’s custodial parent. (25 CFR 23.2)

“Emergency proceeding” means and includes any court action that involves an emergency removal or emergency placement of an Indian child. (25 CFR 23.2)

“Foster care placement” means the temporary placement of an Indian child in an individual or agency foster care placement or in the personal custody of a guardian or conservator prior to the termination of parental rights, from which the child cannot be returned upon demand to the custody of the parent or Indian custodian but there has not been a termination of parental rights. “Foster care placement” does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child’s parents. (Iowa Code Section 232B.3(4))

“Hearing” means a judicial session held for the purpose of deciding issues of fact, of law, or both. (25 CFR 23.2)

“Indian” means a person who is a member of an Indian tribe, or is eligible for membership in an Indian tribe, or who is an Alaska native and a member of a regional corporation as defined in 43 U.S.C. Section 1606. (Iowa Code Section 232B.3(5))

“Indian child” means any unmarried person who is under age eighteen 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. (25 U.S.C. Section 1903.4)

“Indian child’s family” or **“extended family member”** means an adult person who is an Indian child’s family member or extended family member under the law or custom of the Indian child’s tribe or, in absence of such law or custom, an adult person who has any of the following relationships with the Indian child:

- ◆ Parent.
- ◆ Sibling.
- ◆ Grandparent.
- ◆ Aunt or uncle.
- ◆ Cousin.
- ◆ Clan member.

- ◆ Band member.
- ◆ Brother-in-law.
- ◆ Sister-in-law.
- ◆ Niece.
- ◆ Nephew.
- ◆ Stepparent. (Iowa Code Section 232B.3(7))

“Indian child’s tribe” means:

- ◆ The Indian Tribe in which an Indian child is a member or eligible for membership; or
- ◆ In the case of an Indian child who is a member of or eligible for membership in more than one Tribe, the Indian Tribe described in Section 23.109. (25 CFR 23.2)

“Indian custodian” means an Indian person who under tribal law, tribal custom, or state law, has legal or temporary physical custody of an Indian child. (Iowa Code Section 232B.3(9))

“Indian foster home” means a foster home where one or more of the licensed or approved foster parents is an “Indian” as defined in 25 U.S.C. 1903(3). (25 CFR 23.2)

“Indian organization” means any of the following entities that is owned or controlled by Indians, or a majority of the members are Indians:

- ◆ A group.
- ◆ An association.
- ◆ A partnership.
- ◆ A corporation.
- ◆ Other legal entity (Iowa Code Section 232B.3(10))

“Indian tribe” or **“tribe”** means an Indian tribe, band, nation, or other organized Indian group, or a community of Indians, including any Alaska native village as defined in 43 U.S.C. §1602(c) recognized as eligible for services provided to Indians by the United States secretary of the interior because of the community members’ status as Indians. (Iowa Code Section 232B.3(11))

“Involuntary proceeding” means a child-custody proceeding in which the parent does not consent of his or her free will to the foster-care, preadoptive, or adoptive placement or termination of parental rights or in which the parent consents to the foster-care, preadoptive, or adoptive placement under threat of removal of the child by a State court or agency. (25 CFR 23.2)

“Parent” means a biological parent of an Indian child or a person who has lawfully adopted an Indian child, including adoptions made under tribal law or custom. “Parent does not include an unwed father whose paternity has not been acknowledged or established.

Except for purposes of the federal Indian Child Welfare Act as codified in 25 U.S.C. §1913(b), (c), and (d), 1916, 1917, and 1951, "parent" does not include a person whose parental rights to that child have been terminated. (Iowa Code Section 232B.3(12))

"Preadoptive placement" means the temporary placement of an Indian child in an individual or agency foster care placement after the termination of parental rights, but prior to or in lieu of an adoptive placement. "Preadoptive placement" does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child's parents. (Iowa Code Section 232B.3(13))

"Reservation" means Indian country as defined in 18 U.S.C. §1151 or land that is not covered under that definition but the title to which is either held by the United States in trust for the benefit of an Indian tribe or Indian person or held by an Indian tribe or Indian person subject to a restriction by the United States against alienation. (Iowa Code Section 232B.3(14))

"Secretary" means the Secretary of the Interior or the Secretary's authorized representative acting under delegated authority. (25 CFR 23.2)

"Secretary of the interior" means the secretary of the United States department of the interior. (Iowa Code Section 232B.3(15))

"Termination of parental rights" means any action resulting in the termination of the parent-child relationship. "Termination of parental rights" does not include a placement based upon an act by an Indian child which, if committed by an adult, would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the child's parents. (Iowa Code Section 232B.3(16))

"Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings, including but not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or an administrative body of an Indian tribe vested with authority over child custody proceedings. (Iowa Code Section 232B.3(17))

"Upon demand" means that the parent or Indian custodian can regain custody simply upon verbal request, without any formalities or contingencies. (25 CFR 23.2)

"Voluntary proceeding" means a child-custody proceeding that is not an involuntary proceeding, such as a proceeding for foster-care, preadoptive, or adoptive placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights. (25 CFR 23.2)

Identification of an Indian Child

Make inquiries regarding tribal membership or eligibility for tribal membership for all children in the case.

1. In the beginning of every case, and before every change or potential change in custody, ask the father(s), mother(s), and child (if age appropriate) if the child may be Indian or have Indian heritage. Be alert to how the child and family self-identify their ancestry, as this may provide clues as to potential heritage. Ask:
 - ◆ Which of the following do you consider yourself a member: White, Black or African American, Asian, American Indian or Alaska Native, or Native Hawaiian or Other Pacific Islander?
 - ◆ Do you have any American Indian or Alaska Native ancestry?
 - ◆ If the child and family do not indicate they are American Indian or Alaska Native or have American Indian or Alaska Native ancestry, consider the child a non-Indian child.
 - ◆ If the child and family indicate they are American Indian or Alaska Native or they have American Indian or Alaska Native ancestry, ask follow-up questions:
 - Do you identify with any Tribe(s)?
 - Are you enrolled or a registered member of any Tribe(s)?
2. Develop a genogram or use form [470-5623, Ancestry Chart](#), if the child or the child's mother(s), father(s), grandparents, extended family members, or Indian custodian(s) indicates the child may have Indian heritage.
3. If the parents are unavailable or unable to provide a reliable answer regarding the Indian heritage of the child:
 - ◆ Review thoroughly all documentation in the case record to look for clues regarding American Indian or Alaska Native ancestry
 - ◆ Contact the previous worker, if applicable
 - ◆ Contact extended family, identified by the child, parents, or Indian custodian(s), and ask them about the family's heritage.
4. There may also be circumstances under which there is reason to believe a child is an Indian child, which include but are not limited to the following:
 - ◆ any party to the case, e.g. Indian tribe, Indian organization, or a public or private agency, has informed the department that the child is an Indian child;

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- ◆ any public or state-licensing agency involved in child protective services or family support has discovered information which suggests that the child is an Indian child;
 - ◆ the child has given the department reason to believe they are an Indian child;
 - ◆ the residence or domicile of the child, their biological parents, or the Indian custodian is a predominantly Indian community;
 - ◆ the child or the child's parent possesses an identification card indicating membership in an Indian Tribe; or
 - ◆ the court receives information that the child is or has been a ward of a tribal court.
5. Inform the county attorney, as soon as possible, of the Tribe(s) identified so that the county attorney may send a "Notice of Child Custody Proceeding for an Indian Child" to the Tribe(s) by registered mail, return receipt requested, in a timely manner. Follow local protocol in your area for ensuring timeliness of Notice to the Tribe(s).
6. Some Tribes may provide enrollment information to you if you send form [470-5632, Tribal Membership Inquiry](#), along with form [470-5623, Ancestry Chart](#), to the Tribe's designated tribal service agent for ICWA notice. If unsure who the designated tribal service agent is, search the Bureau of Indian Affairs (BIA) directory at <http://www.bia.gov/bia/ois/dhs/icwa>. Share any information received from the Tribe with the county attorney as soon as possible.
- Form [470-5632, Tribal Membership Inquiry](#), is not the official "Notice of Child Custody Proceeding for an Indian Child" to the Tribe. Tribes may not provide enrollment information separate from the official Notice to the Tribe. If the Tribe will not provide enrollment information, work with your county attorney to provide the official Notice as soon as possible.
7. Iowa Code Section 232B.4(3) indicates that the Tribe(s) determination of membership or eligibility for membership is conclusive. However, if the Tribe does not provide evidence of the child's status, the court will make the determination.
8. If the child is:
- ◆ A member of the Tribe(s):
 - Incorporate the Tribe(s) written statement declaring the child to be a member in every case permanency plan or document presented to the court; and
 - Work with the understanding that ICWA applies throughout the entirety of the case.

- ◆ Eligible for membership in the Tribe(s):
 - Confirm the membership status of the biological parent(s) and document it in the case permanency plan, including date and source of documentation;
 - Incorporate the Tribe(s) written statement declaring the child is eligible for membership and the biological parent is a tribal member in every case permanency plan or document presented to the court;
 - Assist the family in formally enrolling the child or establishing membership of the child. If necessary, counsel parents hesitant to enroll a child by emphasizing the positive benefits of tribal membership, particularly in child welfare and adoption proceedings; and
 - Work with the understanding that ICWA applies throughout the entirety of the case.
 - ◆ Not a tribal member and ineligible for membership:
 - Incorporate the Tribe's written statement declaring the child is not a tribal member and is ineligible for membership in every case permanency plan or document presented to the court;
 - Work with the understanding that ICWA does not apply; and
 - With written parental consent, use form [470-0429, Consent to Obtain and Release Information](#), work with the Tribe(s) to meet the cultural needs of the child and family.
9. Inform the court if, subsequent to an initial inquiry, new information emerges that provides a "reason to know" the child is an Indian child.
10. Apply ICWA requirements if you know or have reason to believe the child is an Indian child, until otherwise determined, to avoid unnecessary delays or the potential for disrupted placements or court proceedings in the future.

Active Efforts to Prevent Removal of an Indian Child

Prior to seeking a foster care placement of or termination of parental rights to an Indian child, Federal and Iowa laws require [active efforts](#) be made to provide any necessary remedial services and rehabilitative programs to prevent the breakup of the Indian child's family and to document that efforts were unsuccessful.

The Iowa statute describes active efforts as:

"a vigorous and concerted level of casework beyond the level that typically constitutes reasonable efforts...Reasonable efforts shall not be construed to be active efforts. The active efforts must be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe. Active efforts shall utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregivers." (Iowa Code Section 232B.5(19))

A cornerstone of active efforts is active and early participation and consultation with the child's Tribe in **all case planning decisions**. If the Tribe has not intervened in the court case, have the parent sign form [470-0429, Consent to Obtain and Release Information](#), in order to work with the Tribe, as early in the case as possible.

Note that "active effort" is considered an effort to **engage the family** while "reasonable efforts" simply offer referrals to the family, and leaves it to them to seek out assistance.

Make "active efforts":

1. Before deciding to place the Indian child out of the home; and
2. After placement of the Indian child occurs, in order to prevent the breakup of the family by working toward reunification.

Document in detail, in the child's case permanency plan, active efforts, which must be tailored to the individual needs of the child, family and case circumstances and include but are not limited to:

1. Conducting a strengths-based evaluation of the child and family's circumstances that takes into account the prevailing social and cultural conditions and way of life of the child's Tribe and seeks to maintain safely the child in the home.

2. Developing a case permanency plan with assistance from the parents or Indian custodian, the child if age appropriate, and in consultation with extended family members and the Tribe, offering and employing all available and culturally appropriate family preservation strategies.
 - ◆ Enlist an expert with substantial knowledge of prevailing social and cultural standards and child-rearing practices within the tribal community who can assist in evaluating the family circumstances and developing a case permanency plan that uses tribal and Indian community resources.

Examples of tribal community resources include but are not limited to:

 - Trauma-informed therapy that incorporates best practices in addressing Native American historical and intergenerational trauma;
 - Pastoral counseling that incorporates a Native American holistic approach and focus on spirituality;
 - Tribal/Native faith healers or medicine/holy men or women within the Tribe who utilize prayers, ceremonies, sweat lodge and other interventions;
 - Positive Indian Parenting, a parenting skill curriculum based on Native American beliefs and customs ³;
 - Motherhood is Sacred, Fatherhood is Sacred, Family Spirit, etc.
 - ◆ Share confidential information as necessary with tribal officials to help serve the child and family. Request that they maintain the confidentiality of this information and use it only for purposes of facilitating services and supports for the child and family.
3. Seeking out the necessary family preservation and wrap-around services to support the family with the child in the home, except where imminent (immediate) physical or emotional harm may result, including:
 - ◆ Identify and provide information to the family on needed community resources, such as housing, financial assistance, transportation, mental health evaluation and treatment, substance abuse evaluation and treatment, peer support services, etc.
 - ◆ Consider alternative ways to address the needs of the Indian child, the child's parent(s) and, where appropriate, the family, if the optimum services do not exist or are not available.

³ Bureau of Indian Affairs, Guidelines for Implementing the Indian Child Welfare Act, December 2016, available at <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf>.

4. Assisting parents or Indian custodian(s) and the child in maintaining an ongoing familial relationship, including supporting regular visits in the most natural setting possible and taking steps to keep siblings together.
5. Monitoring progress and participation in services, helping parents overcome barriers such as transportation, and actively assisting parents in obtaining services.

In the U.S. Department of Interior, Bureau of Indian Affairs (BIA) December 2016 Guidelines for Implementing the Indian Child Welfare Act, BIA suggests that state child welfare agencies include the following in their documentation of active efforts:

- ◆ The issues the family is facing that the agency is targeting with the active efforts (these should be the same issues that are threatening the breakup of the Indian family or preventing reunification);
- ◆ A list of active efforts the agency determines would best address the issues and the reasoning for choosing those specific active efforts;
- ◆ Dates, persons contacted, and other details evidencing how the agency provided active efforts; and
- ◆ Results of the active efforts provided and, where the results were less than satisfactory, whether the agency adjusted the active efforts to address the issues more effectively.

When working with American Indian/Alaska Native (AI/AN) children and families, keep in mind the following:

- ◆ AI/AN individuals and communities have varying levels of trauma, both directly and through intergenerational transmission.
- ◆ AI/AN individuals are in all areas of the state (rural, suburban, and urban).
- ◆ The worker cannot determine AI/AN ancestry just by "look" or family name.
- ◆ Each Tribe has its own history and culture, and customs vary by region and Tribe.
- ◆ It is appropriate to ask questions about cultural issues, but please do so respectfully.
- ◆ Communication styles, the role of elders, etiquette, and other cultural components of Tribes may differ from those of non-tribal communities.

Resource Information

- ◆ For additional information, download the [*America Indian and Alaska Native Culture Card: A Guide to Build Cultural Awareness*](#), developed by the Substance Abuse and Mental Health Services Administration.
- ◆ Access [CultureVision™](#) to learn more about the American Indian population.
- ◆ For general information about cultural competence, review [*Standards and Indicators for Cultural Competence in Social Work Practice by the National Association of Social Workers*](#).

Child Custody Proceedings

ICWA applies to any State [child-custody proceeding](#) involving an “Indian child,” based on the child’s political affiliation with the Tribe.⁴

- ◆ Child-custody proceedings include:
 - Foster care placements (voluntary and involuntary placements where parents cannot regain custody of their child “upon demand”);
 - Placements in an institution;
 - Guardianships;
 - Termination of parental rights;
 - Pre-adoptive placements; and
 - Adoptive placements (includes conversion from foster care to adoptive placement).

ICWA also applies to [emergency proceedings](#).

However, ICWA does not apply to the following child-custody proceedings:

- ◆ A Tribal Court proceeding;
- ◆ A voluntary placement, such as a placement through safety planning, where either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal, chosen to place the child out of the home but who could regain custody of the child upon demand, without any conditions;
- ◆ Placement of the child with the other parent; or
- ◆ Divorce proceedings or custody disputes between two parents.

“In determining whether ICWA applies to a proceeding, the State court may not consider factors such as the participation of the parents or the Indian child in Tribal cultural, social, religious, or political activities, the relationship between the Indian child and his or her parents, whether the parent ever had custody of the child, or the Indian child’s blood quantum.” (25 CFR 23.103(c))

ICWA applies when the custody proceeding commences and continues until the conclusion of the custody proceeding, regardless if the Indian child turns 18 during the course of the custody proceeding.

⁴ Bureau of Indian Affairs. 6/17/2016. Frequently Asked Questions. Final Rule: Indian Child Welfare Act (ICWA) Proceedings, available at <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/raca/pdf/idc1-034295.pdf>.

Transfer to Indian Tribal Court

Case Transfer

Child-custody proceedings involving an Indian child transfer to the Indian tribal court in the following circumstances:

- ◆ The child resides on a reservation that has a tribal court, or
- ◆ The child is a ward of the tribal court, regardless of where the child resides, or
- ◆ The child resides on the reservation of heritage and federal law does not specify contrary jurisdiction, or
- ◆ The child is a resident of a reservation that has a tribal court although presently residing off the reservation, or
- ◆ The child's parents, Indian custodian(s), or the child's Tribe petitions, at any time, the state court for transfer, unless one of the following is shown to exist:
 - Either of the child's parents or Indian custodian(s) objects; or
 - The tribal court declines jurisdiction; or
 - The tribal court does not have subject matter jurisdiction under the laws of the tribe or federal law; or
 - Circumstances exist in which the evidence necessary to decide the case cannot be presented in the tribal court without undue hardship to the parties or the witnesses. The tribal court is unable to mitigate the hardship by arranging to receive and consider the evidence or testimony by use of remote communication, by hearing the evidence or testimony at a location convenient to the parties or witnesses, or by use of other means permitted in the tribal court's rules of evidence or discovery.

If either parent or Indian custodian(s) of the child or the tribal court objects to the transfer, the case proceeds in state court and the state court applies **all** of the following in any proceeding:

- ◆ The requirements of the Federal Indian Child Welfare Act
- ◆ The requirements of Iowa Code Section 232B
- ◆ The applicable provisions of any agreement between the Indian child's Tribe and the State of Iowa concerning the welfare, care, and custody of the Indian child

NOTE: The Bureau of Indian Affairs strongly recommends that States enter into agreements with Tribes. These agreements can address, in regards to that Tribe, concurrent jurisdiction, transfer of cases, how States notify the Tribe in emergency removal and initial State hearings, financial arrangements between the Tribe and State regarding care of children, mechanisms for identifying and recruiting appropriate placements, etc.

Iowa Code Section 232B.11(1) requires DHS to make good faith efforts to enter into agreements with Tribes who have land within Iowa, which includes but is not limited to, the Sac and Fox Tribe of the Mississippi in Iowa, the Omaha Tribe, the Ponca Tribe, and the Winnebago Tribe, and with Tribes who have an Indian child residing in Iowa. To date, the State of Iowa has an agreement with the Sac and Fox Tribe of the Mississippi in Iowa (Meskwaki Nation). DHS will continue efforts to enter into agreements with additional Tribes. See [Tribal-State Agreements](#) for more information.

Transfer Requirements

When the case transfers to the Tribe, ensure the following occurs:

- ◆ Establish eligibility for title IV-E at the time of transfer, if an eligibility determination is not already completed, by completing the necessary paperwork and working with the IV-E Eligibility Unit; and
- ◆ Provide essential documents and information necessary to continue the child's eligibility under title IV-E and Medicaid programs to the tribal social services agency, which includes but is not limited to:
 - All court orders;
 - Title IV-E eligibility paperwork and any other documentation that relates to the child's title IV-E eligibility under foster care maintenance payments and adoption or guardianship assistance;
 - Information and documentation regarding the child's eligibility or potential eligibility for other Federal benefits;
 - The case permanency plan developed, including the health and education records of the child and any information and documentation of the child's placement settings; and
 - A copy of the most recent placement's provider license or approval.

Since the case transfers to the Tribe (a sovereign entity), DHS staff are not able to ask the Tribe about the placement of the child.

Interstate Transfer

When working with a child who is involved in an initial child-custody proceeding and the child has tribal heritage with a Tribe whose residence is in a state other than Iowa:

- ◆ If the court orders transfer of the case to tribal court, follow Transfer Requirements above.
- ◆ Follow Interstate Compact on the Placement of Children (ICPC) procedures **only** if there is continuing jurisdiction of an Iowa state court **and** the receiving state will be monitoring the placement.

If the child comes under any of the provisions of ICWA that do not involve continuing jurisdiction of an Iowa court, or Iowa court jurisdiction continues but the Tribe will be monitoring the placement and Iowa has an agreement with the Tribe to do so, ICPC does not apply.

Note: Parties may request case transfer at any child-custody proceeding, which may result in the transfer to the Tribe's court at that time.

Removing an Indian Child From Their Home

Placements of Indian children in foster care settings should occur in accordance with the statutory provisions and requirements of the Federal and Iowa Indian Child Welfare Acts.

An Indian tribe has jurisdiction over any child-custody proceeding involving an Indian child who resides or is domiciled within the reservation or settlement of that tribe. If an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction regardless of the residence or domicile of the child.

Placement of an Indian Child in Foster Care

The standard of evidence for foster care placements of an Indian child is “clear and convincing” evidence that continued custody of the child by both of the child’s parents or Indian custodian(s) is likely to result in serious emotional or physical damage to the child. For termination of parental rights and pre-adoptive or adoptive proceedings, the evidentiary standard is “beyond a reasonable doubt.”

Exhaust all family preservation alternatives deemed appropriate by DHS and the Tribe before seeking out-of-home placement, including safety planning. Do not take any action to seek foster care placement or termination of parental rights of an Indian child until making all efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of Indian families.

NOTE: If placement of an Indian child in out-of-home care occurs, staff must document for the court the [active efforts](#) provided to the family to prevent the placement of the child. The court order should indicate whether DHS made active efforts to prevent the placement of the child.

When placement is necessary:

- ◆ Conduct a thorough ongoing diligent search for placements that comply with the [placement preference hierarchy](#):
 - Ask parents about extended family, whether members of an Indian Tribe or not;
 - Contact all known extended family, whether members of an Indian Tribe or not;
 - Contact all Tribes with which the child is affiliated for assistance in identifying placements;

- Conduct diligent follow-up with all potential placements; and
- Contact institutions for children approved or operated by Indian Tribes if other preferred placements are not available.
- ◆ Maintain the child's cultural connections after placement. For some children, efforts to restore and rebuild a sense of connection to their Indian ancestry may be required.
 - Identify tribal members willing to serve as "mentors" to assist in cultural connections issues.
 - Set up frequent visits in the Indian child's home and the homes of the child's extended family members.
 - Contact representatives of the child's Tribe or the DHS Service HelpDesk to develop a more effective plan for maintaining cultural connections.
 - Document all activities to assess and maintain the child's cultural connections in the "Permanency Plan" section of Part C of the Family Case Plan (Child Placement Plan) and other portions of the case record.

Qualified Expert Witnesses (QEW)

Before ordering foster care or termination of parental rights, the judge must hear testimony from one or more qualified expert witnesses with specific knowledge of the child's Indian tribe(s) family organization and child-rearing practices, the tribe's culture, customs, and laws. Placement shall be ordered only with a determination supported by clear and convincing evidence, **including testimony of a qualified expert witness (QEW)**, that the parents' or Indian custodian'(s) continued custody of the child is likely to result in serious emotional or physical damage to the child.

To identify a QEW for the Indian child's case, staff should:

- ◆ Consult with the Tribe's ICWA specialist, who will probably know the QEWs identified for the Tribe.
- ◆ If staff cannot identify a QEW by working with the Tribe's ICWA specialist, contact the DHS Service HelpDesk for assistance.
- ◆ If staff cannot identify a QEW through the DHS Service HelpDesk, contact the Bureau of Indian Affairs (BIA) to identify tribally recognized QEWs. To identify the appropriate BIA regional office to contact, go to <https://www.bia.gov/regional-offices>, search by Tribe, scroll through the list of Tribes, highlight the applicable Tribe, and then hit apply.

The website will list the assigned BIA regional office's contact information for that Tribe. Do not search by state. There are several Tribes, who have a presence in Iowa, but they are not all in the same BIA region.

- ◆ The QEW **must** meet one of the following criteria (in descending preference order):
 1. A member of the child's Indian tribe who is recognized by the child's tribal community as knowledgeable regarding tribal customs as the customs pertain to family organization or child-rearing practices.
 2. A member of another tribe who is formally recognized by the Indian child's tribe as having the knowledge to be a qualified expert witness.
 3. A layperson having substantial experience in the delivery of child and family services to Indians, and substantial knowledge of the prevailing social and cultural standards and child-rearing practices within the Indian child's tribe.
 4. A professional person having substantial education and experience in the person's professional specialty and having substantial knowledge of the prevailing social and cultural standards and child-rearing practices within the Indian child's tribe.
 5. A professional person having substantial education and experience in the person's professional specialty and having extensive knowledge of the customs, traditions, and values of the Indian child's tribe as the customs, traditions, and values pertain to family organization and child-rearing practices.

However, the court must document efforts made to secure a QEW from 1 through 4 above prior to accepting the testimony of a QEW under 5. These efforts include but are not limited to contacting the Indian child's tribe's governing body, usually the chair of the Tribal Council, that tribe's ICWA office, and the tribe's social service office.

- ◆ The QEW must:
 1. have specific knowledge of the prevailing social and cultural standards of the Indian child's Tribe and
 2. have some familiarity with that particular child.
- ◆ The QEW **cannot be** a department social worker.

Emergency Removal of Indian Child

An [emergency removal](#) of an Indian child should only occur when the child is in imminent (immediate) danger of physical damage or harm.

The party, who files the petition for emergency or temporary removal or foster care placement, must include in or attach to the petition all of the following:

- ◆ An affidavit containing the names, tribal affiliations, and addresses of the Indian child, and of the child's parents and Indian custodians.
- ◆ A specific and detailed account of the circumstances supporting the removal of the child:
 - the imminent physical damage or harm to the Indian child and
 - any evidence that the emergency removal or placement continues to be necessary to prevent such imminent physical damage or harm to the child.
- ◆ All reports or other documents from each public or private agency involved with the removal filed with the court and upon which any court decisions will occur. The reports will include all of the following information, when available:
 - The name of each agency.
 - The names of agency administrators and professionals involved in the removal.
 - A description of the emergency justifying the removal of the child.
 - All observations made and actions taken by the agency.
 - The date, time, and place of each such action.
 - The signatures of all agency personnel involved.
 - A statement of the specific actions each involved agency took or will take for the safe return of the child to the custody of the child's parent or Indian custodian.
- ◆ The steps taken to provide notice to the child's parents, custodians, and Tribe about the emergency proceeding.

- ◆ If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate BIA Regional Director.
- ◆ If the worker thinks the child resides or is domiciled on a reservation where the Tribe exercises exclusive jurisdiction over child-custody matters, document the efforts the worker made or is in the process of making to contact the Tribe and transfer the child to the Tribe's jurisdiction.

The placement must end immediately when no longer necessary to prevent imminent physical damage or harm to the child. The emergency removal court order cannot remain in effect for more than fifteen days unless it is necessary to prevent imminent physical damage or harm to the child. In this case, the court may extend the emergency removal order for a period not to exceed an additional thirty days. Federal regulations indicate that the emergency removal order should not extend past a total of 30 days unless the court finds:

- ◆ Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;
- ◆ The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian Tribe; and
- ◆ It has not been possible to initiate a [child-custody proceeding](#) as defined in 25 CFR 23.2.

Staff should work with the child's Tribe, parents, and other parties as soon as possible, even in an emergency, to begin providing [active efforts](#) to reunite the family.

Voluntary Removal of Indian Child

To be valid, a voluntary consent to either termination of parental rights or to a foster care, pre-adoptive, or adoptive placement must:

- ◆ Be executed at least eleven days after the child's birth;
- ◆ Be executed in writing before a judge;
- ◆ Be accompanied by the judge's certification that the court explained all the terms and consequences of the consent in detail in English (or interpreted in the language of the parent or Indian custodian) and understood fully by both of the child's parents or custodians.
 - For a foster-care placement, the parent or Indian custodian can withdraw the consent for any reason, at any time, in writing or through testifying before the court, and have the child returned; or
 - For termination of parental rights, the parent or Indian custodian can withdraw consent for any reason, at any time prior to the entry of the final decree of termination, in writing or through testifying before the court, and have the child returned; or
 - For an adoptive placement, the parent or Indian custodian may withdraw consent for any reason, at any time prior to the entry of the final decree of adoption, in writing or through testifying before the court, and have the child returned.
- ◆ If the consenting parent requests, in writing, to remain anonymous, the execution of the consent can be in a closed session but still must be before a court of competent jurisdiction.

Notify the Tribe of the request for anonymity; the Tribe is required to keep information confidential.

The consent signed by the Indian child's parents or Indian custodian should contain:

- ◆ The conditions of the consent, if any, in a clear and concise manner
- ◆ Name and birth date of the Indian child
- ◆ Name of the Indian child's tribe
- ◆ Enrollment number for the Indian child and both biological parents, if applicable, or some other indication of the child's membership in the Tribe
- ◆ Name, address, and other identifying information of the consenting parents or Indian custodians
- ◆ Name and address of person or entity who arranged the placement
- ◆ Name and address of prospective foster care parents, if known

Placement Preference Hierarchy

The following applies to both voluntary and involuntary placements, including emergency removals.

Ensure that the placement is the least restrictive setting which:

- ◆ Most approximates a family situation, taking into consideration sibling attachment;
- ◆ Meets the child’s special needs, if any; and
- ◆ Is within reasonable proximity to the child’s home, extended family, or siblings.

Preference requirements shall be:

- ◆ the prevailing social and cultural standards of the Indian community in which the parents or extended family resides or maintains cultural ties;
- ◆ given to placing Indian children with relatives and extended family members, as defined by tribal customs and practices, rather than in non-related foster care settings; and
- ◆ in the absence of such law or custom, the extended family shall be deemed to include a person who has reached the age of 18 and who is the Indian child’s grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin or step-parent.

Ask the child’s Tribe if they have a different placement order than the following:

Placement Type	Placement Preference In Descending Priority Order
Emergency Removal, Foster Care & Pre-Adoptive	<ul style="list-style-type: none"> • A member of the child’s extended family. • A foster home licensed, approved, or specified by the child’s tribe.⁵ • An Indian foster home licensed or approved by an authorized non-Indian licensing authority. • A child foster care agency approved by an Indian tribe or operated by an Indian organization, which has a program suitable to meet the Indian child’s needs. • A non-Indian child foster care agency approved by the child’s tribe. • A non-Indian family committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child’s tribe.

⁵ Iowa Code Section 232B.9(9) gives DHS authority to place children in foster homes and facilities licensed by the Indian Tribe.

Adoptive	<ul style="list-style-type: none">• A member of the Indian child's family.• Other members of the Indian child's tribe.• Another Indian family.• A non-Indian family approved by the Indian child's tribe.• A non-Indian family that is committed to enabling the child to have extended family visitation and participation in the cultural and ceremonial events of the child's tribe.
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Follow the placement order noted above, **unless** the Tribe has a different placement order. If the Tribe has a different placement order, staff must follow the Tribe's placement order.

If staff do not follow the placement order above or the Tribe's placement order, staff must prove by clear and convincing evidence, through oral or written testimony, that there is "good cause" to depart from the placement order.

- ◆ "Good cause" may exist based on one or more of the following considerations:
 - Requests of the child or parent, if they attest that they have reviewed the placement options, if any, that comply with the order of preference
 - Extraordinary physical/emotional needs of the child, as established by a qualified expert witness
 - The unavailability of suitable families after a diligent search, including contact with the tribal social services agency and national Indian programs
 - The presence of a sibling attachment that can be maintained only through a particular placement
- ◆ The following are not "good causes" to depart from the preferences:
 - Socioeconomic status of any placement relative to another placement
 - Ordinary bonding or attachment that flowed from time spent in a non-preferred placement made in violation of ICWA

Adoption Vacated

Whenever a court order vacates the final decree of adoption of an Indian child **or** the adoptive parents have voluntarily consented to termination of their parental rights, a biological parent (father or mother) or prior Indian custodian may petition for return of child. The court shall grant such petition unless there is information showing that such return of child is not in the best interests of the child.

1. Consult with the county attorney to ensure that the child has a temporary custodian and guardian pending final court action.
2. If the department receives temporary custody or guardianship, act in the best interests of the child and present information to the court regarding these best interests.
3. If the court finds that it is in the best interests of the child not to return to the biological parent or former Indian custodian, locate an adoptive placement for the child considering the established order of preference in an adoptive placement of an Indian child.

Indian Child Welfare Act (ICWA) Violations

There are consequences for not following the federal and/or state Indian Child Welfare Act (ICWA) requirements.

- ◆ As specified in Iowa Code Section 232B.14(2), a court having competent jurisdiction is required to vacate the court order and remand the case for appropriate disposition for the following ICWA violations:
 - Failure to send notifications to an Indian parent, Indian custodian, or tribe.
 - Failure to recognize the jurisdiction of an Indian tribe.
 - Failure, without cause as specified in Iowa Code Section 232B, to transfer jurisdiction to an Indian tribe appropriately seeking transfer.
 - Failure to give full faith and credit to the public acts, records, or judicial proceedings of an Indian tribe.
 - Failure to allow intervention by an Indian custodian or Indian tribe, or if applicable, an extended family member.
 - Failure to return the child to the child's parent or Indian custodian when removal or placement is no longer necessary to prevent imminent physical damage or harm.
 - Failure to provide the testimony of qualified expert witnesses as required by Iowa Code Section 232B.
 - Any other violation that is not a harmless error, including but not limited to a failure to comply with 25 U.S.C. Section 1911, 1912, 1913, 1915, 1916, or 1917.

Per 25 CFR 23.137, the following individuals may make a petition to a court of competent jurisdiction, for example an appellate court, to invalidate an action for foster-care placement or termination of parental rights:

- ◇ An Indian child who is or was the subject of any action for foster-care placement or termination of parental rights;
- ◇ A parent or Indian custodian from whose custody such child was removed; and
- ◇ The Indian child's Tribe.

NOTE: There is no requirement that the violation of the petitioner's rights occurred under ICWA for the petitioner to file a petition to invalidate an action.

- ◆ As specified in Iowa Code Section 232B.14(3), if the department, as petitioner in an ICWA case, improperly removed the child from the custody of the child's parent or Indian custodian or improperly retained custody after a visit or other temporary relinquishment of custody, the state court must:
 - decline jurisdiction over the petition and
 - immediately return the child to the child's parent or Indian custodian, unless returning the child to the parent or Indian custodian would place the child in substantial and immediate danger or threat of such danger.
- ◆ Per 25 CFR 23.136, an Indian child's voluntary adoption by a state court may be vacated, if, within two years from the date of the adoption decree, the court determines the parent's consent to the adoption was obtained by fraud or duress.
 - Upon receipt of a parent's petition to vacate the final decree of adoption of the parent's Indian child, the court is required to notify all parties to the adoption proceedings, including the child's Tribe.
 - If the court finds that fraud or duress occurred, the court vacates the final decree of adoption, orders the consent revoked, and orders the child returned to the parent.

Records Retention and Access

Child Welfare Records

Per Iowa Code Section 232B.13 and 25 CFR 23.141, the department must:

1. Establish an automated database for the permanent record, held in perpetuity, of every involuntary or voluntary foster care, pre-adoptive placement, or adoptive placement of an Indian child ordered by an Iowa court and in which DHS is involved. This database must:
 - ◆ Document active efforts made by DHS to comply with the order of preference specified by the child's Tribe or the federal ICWA
 - ◆ Contain the name, birthdate, and gender of the Indian child and the location of the local county office that maintains the original file and documents
2. Maintain, in perpetuity, the original records and documents that comprise a record of every DHS-involved involuntary or voluntary foster care placement, pre-adoptive placement, or adoptive placement of an Indian child, which includes but is not limited to the following information:
 - ◆ The name and tribal affiliation of the child.
 - ◆ The location of the child's Indian tribe or tribes.
 - ◆ The names and addresses of the child's biological parents.
 - ◆ The child's certificate of degree of Indian blood.
 - ◆ The child's tribal enrollment or other membership documentation, if any.
 - ◆ The child's medical records.
 - ◆ The social and medical history of the child's biological family.
 - ◆ The names, ages, and gender of the child's siblings.
 - ◆ The names, ages, and gender of the child's kinship or extended family members.
 - ◆ The names and addresses of the child's adoptive parents.
 - ◆ The identity of any agency having files or information relating to the placement.
 - ◆ All reports concerning the child or the child's family, including detailed information regarding case plans and other efforts to rehabilitate the parents of the child.
 - ◆ A record of efforts made to place the child within and outside of the

- placement preferences specified by the child's Tribe or the federal ICWA, including any documentation of preferred placements contacted and, if any were ineligible as a placement, an explanation as to the ineligibility.
- ◆ A statement of the reason for the final placement decision
 - ◆ All court documents, including petitions and orders
3. Receive information referenced in 1 and 2 above from any court or state-licensed child-placing agency involved in the foster care, pre-adoptive placement, or adoptive placement of an Indian child.
 4. Notify the BIA that DHS maintains the records.
 5. Make the records available to the Indian child's Tribe(s) or the secretary of the interior within seven days of a request for the record.
 6. Provide access, upon request, within seven days, to the records pertaining to the Indian individual or child to the following:
 - ◆ Indian individual who is eighteen years of age or older
 - ◆ Indian child's parent, Indian custodian, attorney, guardian ad litem, guardian, legal custodian, or caseworker of the Indian child
 - ◆ Descendants of the Indian individual or child
 7. Uphold a parent of an Indian child's wishes to remain anonymous by not releasing any identifying records regarding that parent, unless it is necessary:
 - ◆ to secure, maintain, or enforce the Indian child's right to enrollment or membership in the child's Indian tribe,
 - ◆ for determining a right or benefit associated with the enrollment or membership, or
 - ◆ for determining a right to an inheritance.

NOTE: Each party to a foster care placement or termination of parental rights proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the proceeding may be based. (Iowa Code Section 232B.5(17)) DHS staff cannot refuse to provide a party to an ICWA proceeding, which includes a Tribe that has intervened but does not include a Tribe that has not intervened, access to information we filed with the court about the proceedings.

However, there are other ways a Tribe who has not intervened may receive these documents, such as through the Notice requirements to the Tribe, which requires attachment of the petition. The parents of the Indian Child may also reach out to the Tribe for assistance and either provide documentation they received or consent to its release.

Adoption Records

When the court enters a final adoption order of any Indian child, the court must send, to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW., Mail Stop 4513 MIB, Washington, DC 20240, within 30 days, a copy of the decree or order, together with such other information, in an envelope marked "Confidential" that documents:

- ◆ Birth name and birthdate of the Indian child, and Tribal affiliation and name of the Indian child after adoption;
- ◆ Names and addresses of the biological parents;
- ◆ Names and addresses of the adoptive parents;
- ◆ Name and contact information for any agency having files or information relating to the adoption;
- ◆ Any affidavit signed by the biological parent or parents asking that their identity remain confidential; and
- ◆ Any information relating to Tribal membership or eligibility for Tribal membership of the adopted child.

Vacated or Set Aside Adoptions

Per 25 CFR 23.139, DHS must work with the court to ensure requirements are met when an adoption of an Indian child is vacated or set aside.

- ◆ Notify, by registered or certified mail with return receipt requested, the Indian child's biological parent or prior Indian custodian and the Indian child's Tribe whenever:
 - A final decree of adoption of the Indian child has been vacated or set aside; or
 - The adoptive parent has voluntarily consented to the termination of his or her parental rights to the child.
- ◆ Notice requirements include:
 - Indian child's current name and any former name
 - Information regarding the parent, Indian custodian, or child's Tribe(s) right to petition for return of custody of the child, and
 - Information that sufficiently allows the parent, Indian custodian, or child's Tribe(s) to participate in any scheduled hearings.

- ◆ A biological parent or prior Indian custodian may waive a right to such notice by executing a written waiver of notice and filing the waiver with the state court.
- Prior to accepting the waiver, the court must explain the terms and consequences of waiving notice and instructions on how to revoke the waiver.
 - ◇ Court certifies the explanation was detailed and in English (or the language of the biological parent or prior Indian custodian, if English is not the primary language), and was fully understood by the biological parent or prior Indian custodian.
- Execute the waiver in a closed session of the court if the biological parent or prior Indian custodian requested confidentiality.
- Revocation of the waiver may occur at any time by the biological parent or prior Indian custodian filing with the court a written notice of revocation.
 - ◇ If the filing of the notice of revocation occurs after any child-custody proceeding, it does not affect that child-custody proceeding.

NOTE: 25 U.S.C. 1916(a) provides certain rights to the biological parent or prior Indian custodian. Providing notice enables the biological parent or prior Indian custodian to exercise those rights.

Request by Adult Adoptee

If an Indian person who was the subject of an adoptive placement is 18 and requests information of the court, the court shall:

- ◆ Inform the person of the tribal affiliation and the tribal affiliation, if any, of the person's biological parents.
- ◆ Provide other information as may be necessary to protect any rights flowing from the person's tribal relationship.
- ◆ Provide information from the child welfare records maintained in the local county DHS office, including through an appropriate court order, if necessary.

Work with the court to ensure that, with each adoptive placement, there is sufficient information in the record regarding the person's Tribal relationship to allow the court to meet its requirements under 25 CFR 23.138 for the protection of any rights that may result from the person's Tribal membership.

Tribal-State Agreements

The DHS director or director's designee must make good faith efforts to enter into agreements with Indian tribes who have land in Iowa, or whose tribes have an Indian child who resides in Iowa, regarding jurisdiction over child custody proceedings and the care and custody of Indian children. These agreements:

- ◆ Promote the continued existence and integrity of the Tribe as a political entity;
- ◆ Secure and maintain the political, cultural, and social relationship of the Indian child with their Tribe;
- ◆ Assure tribal services and Indian organizations or agencies are used to the greatest extent practicable in planning and implementing any action pursuant to the agreement concerning the care and custody of Indian children;
- ◆ Assure community services and resources developed specifically for Indian families are used, when tribal services are unavailable; and
- ◆ May specify additional requirements related to conducting child protective assessments, when to transfer a case to the Tribe, accessing services, etc.

DHS has an agreement and protocol with the Sac and Fox Tribe of the Mississippi in Iowa (Meskwaki Nation).

Ask your supervisor about the agreement and protocol with Meskwaki Nation whenever you have a case where the child or family self-identifies as Meskwaki.

Child-Specific Agreements

DHS may enter into child-specific agreements with federally recognized Tribes, including Tribes considered "domiciled" in another state, e.g. Omaha Tribe domiciled within Nebraska. These agreements may cover the same topics as tribal-state agreements above.