Family, Children and Adult Services Procedure Letter No. 215

To: All Family, Children and Adult Services Manual Holders

From: Michael B. Colbert, Director

Subject: Background Information and Contacts for Implementing Provisions of the Indian Child Welfare Act

This letter updates information for Public Children Services Agencies (PCSAs) and Private Child Placing Agencies (PCPAs) to assure protections under the Indian Child Welfare Act (ICWA) are provided to American Indian and Native Alaskan children and their families who are members of, or eligible for membership in federally recognized tribes. The information presented in this letter should serve as a supplement to Ohio Administrative Code rules 5101:2-53-01 through 5101:2-53-08 which provides direction to agencies in implementing requirements of the Act.

While all caseworkers should be familiar with the rules and procedure letter to assure protections are provided to the children and families with whom the agency is involved, all agencies should have a designated person who can serve as a central point of contact for periodic updates and information sharing related to ICWA.

The first part of this guidance letter has been organized into a question and response format to help provide a context for Ohio's child welfare caseworkers to better understand why ICWA is relevant to their work with families. The second part outlines court procedural requirements to help agencies prepare for different types of hearings. And, finally the last section provides caseworkers with resources for additional information.

I. ICWA Information for Ohio's Child Welfare Caseworkers

Why are there specific protections for American Indian or Native Alaskan children and families who are members of or eligible for membership in federally recognized tribes?

Federally recognized tribes are dependent sovereign nations that have certain rights to self-governance. In the colonization of America, numerous treaties and agreements were developed between the United States (U.S.) government and Native American Tribal governments. The Indian Child Welfare Act (ICWA), passed in 1978, is only one of several pieces of legislation enacted over the course of many years to honor these treaties.
and agreements. The "trust responsibility" or obligation of the U.S. government to protect the interests, safety, and well-being of the tribes and individual Indians, is based on the doctrine of Indian sovereign nationality. The U.S. Department of the Interior, Bureau of Indian Affairs (BIA) is the federal agency overseeing this trust responsibility.

**Why are these same protections not afforded to individuals from other cultures or ethnic groups?**

The considerations required by ICWA and other pieces of legislation to protect American Indians or native Alaskans are based on tribal sovereignty and the jurisdiction that tribes have as governments interfacing with the U.S. government.

**Are all individuals having American Indian or Native Alaskan heritage afforded protections under ICWA?**

No. ICWA protections only apply to children born to a parent who is a member of, or eligible for membership in a federally recognized tribe, and their biological parents whether or not both parents have Indian ancestry.

**Is there a certain percentage of American Indian ancestry that a child and his or her parents must have in order to be considered eligible for membership in a federally recognized tribe?**

The criterion for tribal membership differs from one tribe to another. Many tribes have adopted the current BIA standard of one-quarter blood quantum; however, some tribes are considering adopting more liberal blood quantum requirements. Some tribes include a person as a member if he or she descended from a tribal member who was listed on the tribal rolls as of a specific date. A tribe can also change a prior determination of ineligibility and accept an individual for enrollment. In order to determine a particular tribe's criteria, and the family's eligibility for membership in that tribe, it is necessary to contact that tribe directly.

**Why should Ohio agencies be concerned about compliance with ICWA when there are no federally recognized tribes having reservations in Ohio?**

The majority of Indians in the U.S. reside off reservation. Although Ohio wasn't a designated area for the U.S. government relocation efforts, as of the last census (Census 2000) Ohio had 24,486 individuals who self-identified as American Indian. Tribal enrollment numbers are tied to the tribe, not the current location of its members.

**What types of cases are subject to ICWA?**

ICWA applies to all child custody proceedings including foster care placements, termination of parental rights, pre-adoptive placements, and adoptive placements. A placement that meets the definition of foster care placement and results from an act that would not be deemed a crime if committed by an adult such as a status offense, is a child
custody proceeding under ICWA. A child custody placement pursuant to a divorce where someone other than one of the parents will obtain custody of the child is also a child custody proceeding under ICWA. Voluntary surrenders initiated by the parents are also considered child custody proceedings under ICWA.

Are voluntary surrenders for the purposes of adoption subject to ICWA?

Yes. There are a number of considerations related to voluntary surrenders involving Indian children protected under ICWA. ICWA requires consideration of the state's adoption laws, as well as ICWA. The law affording the most protection to the Indian child and his or her parents would be followed. Under ICWA, a birth parent entering into a voluntary surrender agreement has the right to withdraw that consent within two years, when fraud has been involved or the surrender was entered into under duress. Furthermore, it could be argued that a birth parent did not have the ability to enter into a voluntary consent agreement if the Indian tribe has exclusive jurisdiction over the child. A court may be ruled as being without jurisdiction to enter into an adoption decree. If a child's adoption disrupts, ICWA also provides for notice to the birth parent for reconsideration.

ICWA provides preferences for the adoption of Indian children. Those preferences include: extended family, other members of the tribe, other Indian families including single parents, and the tribe's order of preference. Unless a consenting parent expresses a desire for anonymity, the court or agency is required to notify the child's extended family and tribe that they will be given preference in the adoption decision. Diligent search to apply preferences includes at a minimum: contact with the tribe's social services program, a search of available Indian homes and contact with nationally known Indian programs with available placement resources. If the parent desires their identity to be protected, the agency is required to seek assistance from the Bureau of Indian Affairs in assuring that the child is able to establish his or her rights to membership in a federally recognized tribe while protecting the identity of the parent.

If ICWA primarily provides protections related to child custody proceedings, why should staff other than those involved with making placements be knowledgeable regarding ICWA requirements?

PCSAs must document their "active efforts" to prevent the breakup of the family. Active efforts include but are not limited to actions taken when PCSAs first become involved with the family. Active efforts can only be employed if the PCSA is aware of the family's membership or eligibility for membership in a federally recognized tribe upon the agency's initial involvement with the family. Therefore, it is critical that agency staff involved in the intake process, as well as, staff involved in providing ongoing in-home services are knowledgeable of ICWA requirements.
What are active efforts?

While active efforts might be viewed as similar in some respect to reasonable efforts to prevent placement and reunify the family, active efforts are more specific to tribal governance. Active efforts begin with the diligence agencies use in determining eligibility for tribal membership and assuring that all potential parties to the case are notified to permit their active involvement. Active efforts continue throughout the life of the case, including the agency's efforts to work with the family and tribe to prevent the child's removal from the home, and provide services to remediate conditions that could result in the child's removal. Active efforts also apply to reunification efforts, as well as adherence to placement preferences required under ICWA.

What information is important to obtain from a family in order to verify eligibility for membership in a federally recognized tribe?

When the PCSA becomes involved with a family who is the subject of a report of abuse, neglect or dependency, it is critical that the agency as part of the family's assessment, inquire whether the child or family members have American Indian or Native Alaskan ancestry. If the family does, the agency should attempt to obtain additional information regarding the specific tribe or band, and/or the region from which the family's tribe or band originated or was relocated. This may assist the agency in determining the right office to contact, since contact information of tribes is organized by the Bureau of Indian Affairs, first according to the region, and then by tribe name. As an example, the Chippewa have several bands originating in different states/regions. The Minnesota Chippewa Tribe includes the following Bands of Chippewa Indians: White Earth, Leech Lake, Fond du Lac, Bois Forte (Nett Lake), Grand Portage and the Millie Lac Band. Michigan is home to L'Anse and Ontonagon Bands of Chippewa Indians, among a number of others. The Bad River Band of Lake Superior Chippewa Indians, as well as other bands, are based in Wisconsin.

Using a genogram or other tool to identify the names and relationships of extended family members is also helpful since some tribes automatically include a person as a member if he or she descended from a tribal member who was listed on the tribal rolls as of a specific date.

If the family is able to identify a tribal affiliation, how can I determine whether the tribe is federally recognized?

The Secretary of the Interior periodically publishes a list of federally recognized tribes. There are currently \textbf{564} federally recognized American Indian tribes and Alaska Natives in the U.S as listed by the most recent federal register dated \textbf{Fall of 2010}. This list, which is alphabetized according to the federally recognized name of the tribe, can be accessed online at the following website: (Bad River Band of Lake Superior Chippewa Indians for example would be alphabetized under Bad River rather than Chippewa.) \url{http://www.bia.gov/DocumentLibrary/index.htm}.
The Office of Federal Acknowledgement, Bureau of Indian Affairs in Washington, D.C., keeps a list of other non-federally acknowledged tribes which have filed a petition or letter of intent to become federally recognized. This list can be accessed online at the following website:  http://www.bia.gov/WhoWeAre/AS-IA/OFA/index.htm.

In addition, the Assistant Secretary's Office of the Bureau of Indian Affairs in Washington, D.C. also keeps information on Congressional action that may reaffirm or restore the government to government relationship between a tribe and the U.S. government whose relationship was previously terminated. The address is at the back of this guidance letter.

**How do I know where to send the notice or inquiry regarding the family’s eligibility for membership in a federally recognized tribe?**

The Bureau of Indian Affairs publishes a directory of tribal leaders and BIA area representatives that can be accessed online at the website below. The directory organizes the contact information first based on BIA region, and then alphabetically according to the federally recognized name of the tribe. The latter part of the directory references the tribal entities by state. When a tribe is known, the notice or inquiry should be sent to the tribal leader of the specific tribe. The directory can be accessed online at the following website:  http://www.bia.gov/DocumentLibrary/index.htm.

**What if the family member or other resource shares that the family has American Indian ancestry but is unable to identify a specific tribal affiliation?**

In accordance with the requirements of ICWA, the agency is required to proceed as if the family has protections afforded to it by ICWA until it is officially notified by the Bureau of Indian Affairs or the tribe in question that the child and family are not eligible for membership. The agency would send the inquiry to the BIA regional office in Minnesota via registered mail, return receipt requested. In addition, another response center specific to child welfare issues is being established in Albuquerque, New Mexico. Contact information for both have been included on the back of this guidance letter.

**II. Court Procedural Requirements for ICWA Compliance**

ICWA requires the court to assure the rights of Indian children, adults and tribes are protected. At each hearing, from the initial Protective Hearing to, if applicable, the Adoption Hearing, the court is required by ICWA to make specific inquiries and decisions, and issue written findings. These considerations are largely based on the efforts of the PCSA and the documentation it submits to court. Therefore, it is critical that the agency understand the issues the court must consider at each hearing so it can assure it has met all of its responsibilities in accordance with ICWA. The Indian Child Welfare Act Checklists for Juvenile and Family Court Judges published by the National Council of Juvenile and Family Court Judges, June 2003 identifies court hearing requirements. Information on the hearing requirements is provided in the next several pages to assist the PCSA in its efforts in preparing for court at each stage.
A. Protective Hearing
The PCSA must file a sworn petition or complaint with the court at or prior to the time of the preliminary protective hearing which describes all circumstances of the child's removal, any allegations of abuse or neglect, and all efforts made to try to ensure safety and prevent the need for removal.

In accordance with OAC 5101:2-53-03, "Determination of Indian Status, Tribal Eligibility and Membership," the agency must bring to the court verification of the child's heritage or documentation of all efforts to secure verification of the child's heritage. If eligibility for membership in a federally recognized tribe has been established, in accordance with OAC 5101:2-53-06, "Involuntary Custody of Indian Children," the agency must provide the court with documentation of its efforts to notify the required parties of their rights, or if eligibility has not been established, verification that the agency has notified the Bureau of Indian Affairs and the U.S. Secretary of the Interior. All parties must be notified via registered mail, return receipt requested. The agency must also document its efforts to enable the court to consider issues and make written findings identified below.

Key issues the court must consider during the protective hearing include:
1. Whether the child is an Indian child as defined by ICWA;
2. Whether the child was in the custody of an Indian custodian prior to the hearing;
3. Whether the child resides on or is domiciled on a reservation, or whether the child is already a ward of a tribal court, depriving the court of jurisdiction (If the child resides on or is domiciled on a reservation, but is temporarily off the reservation, the court may order an emergency removal from the parent or Indian custodian to prevent imminent physical harm to the child.);
4. Whether the agency mailed proper notice to the child's putative father, including a father who has acknowledged paternity, even if not legally established;
5. Whether the agency provided proper notice and inquiry to all tribes the child may be eligible for membership, including a family chart or genogram to facilitate the tribe's membership determination; or whether the agency provided written notice to the U.S. Secretary of the Interior if the child's tribe is not known at this time;
6. What efforts the agency has made to identify extended family or other tribal members or Indian families for placement of the child (including whether the agency attempted to create a family chart or genogram, and solicited assistance from neighbors, family or members of the Indian community who may be able to offer information); and
7. Whether the parent is able to read and/or understand English and if not, what efforts have been made to ensure that the parent understands the proceedings and any action the court will order.

Key decisions the court must make:
1. Whether the agency, made active efforts to identify responsible extended family or other tribal members or Indian families to serve as a placement for the child, if necessary;
2. Whether the agency in assessing the appropriateness of a placement with an individual who meets the placement preferences of ICWA or the tribe, relied upon the
social and cultural standards of the Indian community in which the parent or extended family resides, or with which the parent or extended family maintains social and cultural ties;
3. What additional efforts need to be made to ensure the child is placed with extended family or within his/her tribal community;
4. What culturally relevant services will allow the child to remain at home;
5. Whether parties will voluntarily agree to participate in services;
6. Whether restraining orders or orders expelling an allegedly abusive parent from the home are appropriate or necessary;
7. Whether orders are needed for examinations, evaluations, or other immediate services; and
8. What are the terms and conditions of visitation by parents or Indian custodian.

Required notice and advice of rights:
As part of its requirements under ICWA, the court must ensure that the agency sends (via registered mail, return receipt) notice of the next scheduled hearing and a copy of the petition and advice of rights under ICWA, to the following parties if not at the hearing:
1. The child's parent;
2. The Indian custodian; and
3. The child's tribe.

Key written findings the court must make at the protective hearing include:
1. Whether, at the time of removal, the child was already a ward of a tribal court (if known) thereby depriving the state court of jurisdiction;
2. Whether, at the time of removal, the child was in the custody of an Indian custodian;
3. Whether active efforts were made prior to removal, to provide remedial services and rehabilitative programs designed to prevent the breakup of the family and whether the efforts were successful;
4. Whether there was clear and convincing evidence, including testimony of a qualified expert witness that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child; and
5. Whether the parent, Indian custodian, or child's tribe requested an additional 20 days to prepare for the hearing.

If the child is placed in substitute care, the court also needs to do the following:
1. Specify why continuation of the child in the home would be contrary to the child's welfare;
2. Specify whether the child is to be placed in a home that meets the priority requirements of ICWA, or if the child is not to be placed according to the priority requirements, to specify whether:
   a. The child's tribe issued a resolution establishing a different order of preference and the placement is the least restrictive setting appropriate to the particular needs of the child; or
   b. There is good cause not to follow the placement preferences;
3. Order the agency to make ongoing, diligent searches to locate placement meeting the preferences established within ICWA;
4. Specify the terms of visitation with the parent(s), Indian custodian, and extended
family; and
5. Order the agency to arrange for the child to visit with other tribal members if no extended family is available and to coordinate with the child's tribe to arrange for the child to attend significant cultural and familial events.

B. Adjudication Hearing
In addition to items considered at the protective hearing, the court must make additional decisions and issue written findings of fact and conclusions of law. Those requiring additional information from the PCSA include the following:

Key decisions the court must make:
1. Which allegations of the petition have been proved or admitted;
2. Whether there is a legal basis for continued court and agency intervention; and
3. Whether the agency made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the family (and if so, whether these efforts were successful).

Additional temporary decisions the court may make if the disposition hearing will not occur within a short time after the adjudication hearing:
1. Where the child is to be placed prior to the disposition hearing;
2. Whether to order further testing or evaluation of child, parent(s), or Indian custodian in preparation for the disposition hearing and ensuring that all assessments or evaluations are culturally appropriate;
3. Assure that the agency is, in preparation for disposition, making prompt and diligent efforts to identify and evaluate caretaker, extended family, or if no family member is available, other tribal members or other Indian families;
4. Order the alleged perpetrator to stay out of the family home and have no contact with the child;
5. Direct the agency to continue its efforts to notify non-custodial parents, including unwed fathers whose paternity has been acknowledged or established; and/or
6. Set terms for visitation, support, and other intra-family communication including parent-child and sibling visits when the child is in foster care prior to disposition.

Written findings of fact and conclusions of law must specify:
1. Whether the child is an Indian child under ICWA (or if not known, whether the child's tribe has been provided adequate notice, sufficient information, and an opportunity to determine the child's eligibility for membership);
2. What efforts, if any, have been made to identify the child's tribe;
3. Whether the agency has mailed notice and necessary information to all tribes in which the child may be eligible for membership to enable each tribe to ascertain whether the child is a member or eligible for membership;
4. Whether written notice was sent to the U.S. Secretary of the Interior if the child's tribe is not yet known;
5. Whether the child either resides on or is domiciled on a reservation, or is already a ward of a tribal court, thereby depriving the state court jurisdiction;
6. Whether the child was in the custody of an Indian custodian at the time of removal;
7. Whether the agency mailed notice of the hearing and a copy of the petition and advice of rights to the Indian custodian by registered mail, return receipt;
8. Whether the agency mailed notice of the hearing and a copy of the petition and advice of rights to the child's Indian tribe, if known, by registered mail, return receipt;
9. Whether the child's tribe seeks to intervene in the proceedings, and if so, grant that request. (If the child is eligible for membership in more than one tribe, the court must ascertain which tribe is the child's tribe for purposes of ICWA);
10. Whether the child's Indian custodian, if there is one, seeks to intervene in the proceedings and, if so, grant that request;
11. Whether the child's tribe, parent, or Indian custodian requested an additional 20 days in which to prepare for the hearing, and if so, grant that request and reschedule the hearing;
12. Whether a parent, Indian custodian, or the child's tribe has filed a motion or petition to transfer the case to tribal court;
13. If the court declines to transfer the case, whether either parent vetoed the transfer, the tribal court declined to accept jurisdiction, or the reasons, if any, why there is good cause not to transfer the case to the tribal court;
14. Whether the court advised the parent(s) or Indian custodian that they have a right to a court-appointed attorney if they are indigent;
15. Sufficiently detailed information to justify why the court found by clear and convincing evidence, including testimony from an expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child;
16. Sufficiently detailed information to justify agency and court choices for treatment and services;
17. How the court's findings relate to subsequent case planning (written in easily understandable language);
18. Whether the parent can read English and, if not, what steps will be taken to ensure that the parent understands the court's written order; and
19. The date and time of the next hearing.

C. Disposition Hearing
In preparation for this hearing, the agency is responsible for submitting a predisposition report to the court. Key items the agency needs to include for the court's consideration are:
1. A statement of family changes needed to correct the problems necessitating agency intervention, with timetables for accomplishing them;
2. A description of services to be provided to assist the family, including those that the tribe or an Indian organization may offer and make available;
3. A description of services to be provided to ensure the child's ongoing connection to his/her culture, including attendance at significant cultural events, while placed outside of his/her family; and
4. A description of actions to be taken by parents(s) or Indian custodian to correct the identified problems and any steps the parent or Indian custodian has taken thus far.

Foster Placement Affidavit
When the agency recommends foster placement, an affidavit documenting active efforts must be submitted. Key elements of the affidavit include:

1. A description of the active efforts made by the agency to provide remedial services and rehabilitative programs designed to prevent the breakup of the family and an explanation why these efforts were unsuccessful;
2. A description of the efforts made to coordinate with the child's tribe or any Indian organization in assisting the Indian parent or Indian custodian with services needed to avoid the need for placement, and an explanation if the services were unsuccessful;
3. An explanation of why the child cannot be protected from the identified problems in the home even if services are provided to the child and family;
4. An explanation of the active efforts made to contact the child's tribe, extended family, and other local Indian organizations for assistance in identifying and contacting extended family and other tribal members or Indian families about providing an appropriate placement for the child;
5. A description of arrangements made by the agency to ensure visitation with extended family, or if there is not family in the area, with other tribal members, to support the child's cultural connections; and
6. A description of the agency's plan to coordinate with the child's tribe and family to identify significant cultural and important familial events and arrange for the child's attendance.

Key decisions the court must make:
1. Whether the agency's proposed case plan addresses the needs of the child and the parent(s) or Indian custodian;
2. Whether the parent is able to read the proposed case plan and, if not, the effort that will be made to ensure that the parent fully understands the requirements of the plan;
3. Whether it is necessary to remove the child from his or her home to prevent serious emotional or physical damage; and
4. Where the child should be placed.

Written findings of fact and conclusions of law must:
1. Determine the legal disposition of the case, including the custody of the child, based upon the statutory options provided under federal law unless state law provides a higher degree of protection, or unless there is a governing state-tribal agreement;
2. State the long-term plan for the child;
3. Identify the active efforts that have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian child's family;
4. Specify that there is clear and convincing evidence that continued custody of the child by the parent (or Indian custodian) would likely result in serious emotional or physical damage to the child;
5. Specify whether the child was placed within the placement preferences under ICWA, and if not, whether the child's tribe issued a resolution establishing a different order of preference, as long as the placement is the least restrictive setting appropriate to the particular needs of the child;
6. Specify whether the agency relied upon the social and cultural standards of the Indian
community in which the parent or extended family reside or with which the parent or extended family maintain social and cultural ties when the agency determined whether an individual is an appropriate placement for the child;

7. If the child's tribe did not issue a resolution indicating a different order of preference for the placement of the child, specify the reasons why there is good cause to deviate from the placement preferences;

8. If there is not good cause to deviate from the placement preferences, and there is no tribal resolution re-ordering the placement preferences, order the agency to move the child to a home that complies with the placement preferences;

9. If placement or services are ordered that were not agreed upon by the parties, specify the evidence or legal basis upon which the order is made;

10. If applicable, specify why continuation of the child in the home would be contrary to the child's welfare; and

11. If the state's case plan conflicts with or does not meet the requirements of ICWA, disapprove or modify the agency's proposed case plan.

D. Review Hearing
At the Review Hearing, the agency is required to submit a report that contains the following information:

1. A statement of family changes needed to correct the problems necessitating intervention, with timetables for accomplishing them;

2. A description of services to be provided to assist the family, specifically identifying those made available with assistance from the tribe or an Indian organization;

3. A description of services to be provided to ensure the child's ongoing connection to his/her culture while placed outside of his/her family, including attendance at significant cultural events; and

4. A description of actions to be taken by the parents to correct the identified problems, and of the parents' compliance with the case plan thus far.

Affidavit Documenting Active Efforts
When the agency recommends continued foster placement, the agency must submit an affidavit to the court which contains the following information:

1. A description of active efforts to reunify the family since the last disposition or review hearing and if those efforts were not successful, an explanation regarding why;

2. A description of active efforts to coordinate with the child's tribe or any Indian organization in assisting the Indian parent or Indian custodian with services needed to avoid the need for placement, and an explanation why these services were unsuccessful;

3. An explanation of why the child cannot be protected from serious emotional or physical harm if the child remains in the home even if services are provided to the child and family;
4. An explanation of the diligent efforts made to contact the child's extended family about providing a placement for the child or, if family members are not known, diligent efforts made to contact the child's tribe and other local Indian organizations for assistance in identifying and contacting extended family, other tribal members, or Indian families for placement;

5. Efforts made by the agency to ensure the child's visitation with extended family, or, if none is available, with other tribal members, to ensure the child's ongoing participation in his/her culture; and

6. Efforts made by the agency to coordinate with the child's tribe and family to make arrangements for the child to attend significant cultural and important familial events.

Key decisions the court must make:
1. Whether there is a need for continued placement of the child;
2. Whether active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family and, if so, whether the services were successful;
3. Whether efforts were made to ensure that the parent understands the case plan if the parent does not read English;
4. Whether the court-approved, long-term permanent plan for the child remains the best plan for the child;
5. Whether the services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances;
6. Whether the child is placed according to the placement preferences in the ICWA and, if not, whether the child should be moved into a preference placement;
7. Whether the terms of visitation need to be modified;
8. Whether any additional court orders need to be made to move the case toward successful completion; and
9. What time frame should be established for goals to achieve reunification or other permanent plan for each child.

Written findings of fact and conclusions of law:
1. Whether the agency has identified the child's tribe;
2. Whether the agency sent proper notice of the hearing and a copy of the petition and advice of rights to the parent(s), Indian custodian (if any), and child's tribe by registered mail, return receipt;
3. Whether the tribe has been afforded a full opportunity to participate in the proceedings and, if so, whether the agency provided the child's tribe with copies of the petition, reports, and information concerning the child;
4. Why the child is in need of either continued placement outside the parent's home or continued supervision, articulating the clear and convincing evidence that continued custody of the child by the parent or Indian custodian would likely result in serious emotional or physical damage to the child;
5. Whether family reunification and an end to court supervision continues to be the long-term case goal, and why;
6. Whether the agency has made active efforts to provide remedial services and rehabilitative programs designed to eliminate the need for placement of the child outside the home of the parent or Indian custodian and whether the efforts were successful;

7. Whether the agency has made ongoing, diligent search to locate extended family, a tribal member, or other Indian family for placement if the child is not already within a preference placement;

8. Issue orders for the agency to make additional efforts necessary to meet the needs of the family and move the case toward completion, including culturally relevant services that may be available with assistance from the tribe or local Indian/native organization;

9. Assure that findings are written in easily understandable language that allows the parent(s) or Indian custodian to fully understand what action they must take to have the child returned to their care (interpreter should be provided for parent or Indian custodian whose first language is not English);

10. Approve proposed changes in the case plan and set forth any court-ordered modifications needed as a result of information presented at the review;

11. Identify an expected date for final reunification or other permanent plan for the child;

12. Where the case plan conflicts with or does not meet the requirements of the ICWA, disapprove or modify the agency's proposed case plan to conform to the requirements of the ICWA;

13. Make any necessary orders to resolve the problems that are preventing reunification or the completion of another permanent plan for the child; and

14. Set date and time for next hearing, if needed.

E. Permanency Planning Hearing

The agency is required to submit a report to the court in preparation for the Permanency Planning Hearing. This report must include:

1. The relief being sought and address the issues that the judge needs to determine;

2. The plan to carry out the placement decision;

3. When the petition or report requests that a child be returned home on a certain date, the following items must be included:
   a. How the conditions or circumstances leading to the removal of the child have been corrected;
   b. A description of actions taken by the parent(s) or Indian custodian to correct the identified problems;
   c. A description of the active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family, including efforts made by the tribe, an Indian organization, or any other agency or organization;
   d. The frequency of recent visitation and its impact on the child; and
   e. A plan for the child's safe return home and follow-up supervision after family reunification.

4. When the petition or report requests termination of parental rights, the following items should be included:
a. Facts and circumstances supporting the grounds for termination;
b. A description of the active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family and an explanation why these efforts were unsuccessful;
c. A description of the active efforts made to coordinate with the child's tribe or an Indian organization in assisting the Indian parent or custodian with services needed to avoid termination of parental rights and an explanation why these efforts were unsuccessful;
d. An explanation of why the child cannot be protected from the identified problems in the home;
e. A summary of the agency's understanding of the tribe's position regarding the permanency plan, including an attachment of any correspondence or supporting documentation sent by the tribe to the agency;
f. An explanation of the active efforts made to contact the child's tribe, extended family, and other local Indian organizations for assistance in identifying and contacting extended family and other tribal members or Indian families about providing an appropriate placement for the child;
g. If the child is not placed with an extended family member, another tribal member, or another Indian family, an explanation of why the child cannot be moved to a placement that meets the preferences established within the ICWA;
h. A description of arrangements made by the agency to ensure visitation with extended family, and of all efforts made to support the child's cultural connections; and
i. A permanency plan for the child.

5. When another planned permanent living arrangement is proposed, the report should include the following items:
a. Facts and circumstances refuting the grounds for termination of parental rights and showing that although the child cannot be placed with parents, termination is not in the best interests of the child;
b. A description of why the planned permanent living arrangement is in the best interests of the child;
c. An explanation of the active efforts made to contact the child's tribe, extended family, and other local Indian organizations for assistance in identifying and contacting extended family and other tribal members or Indian families to identify a culturally appropriate placement for the child;
d. If the child is not placed with an extended family member, another tribal member, or another Indian family, an explanation of why the child cannot be moved to a placement that meets the preferences established within ICWA;
e. A description of arrangements made by the agency to ensure visitation with extended family, or, if there is no extended family, with other tribal members, to support the child's cultural connections;
f. A summary of the agency's understanding of the tribe's position regarding the permanency plan, including an attachment of any correspondence or supporting documentation sent by the tribe to the agency; and
g. A plan to ensure the stability of the planned permanent living arrangement.
Affidavit Documenting Active Efforts:

When the agency recommends a permanency plan, an affidavit documenting the following must be submitted:

1. Active efforts made to reunify the family since the last disposition or review hearing and, if those efforts were not successful, an explanation why;
2. Efforts to coordinate with the child's tribe or any Indian organization in assisting the Indian parent or Indian custodian with services needed to avoid the need for placement, and an explanation why these services were unsuccessful;
3. Why the child cannot be protected from serious emotional or physical damage if the child remains in the home even if services are provided to the child and family;
4. Diligent efforts made to contact the child's extended family about providing a placement for the child, or, if family members are not known, diligent efforts made to contact the child's tribe and other local Indian organizations for assistance in identifying and contacting extended family, other tribal members, or Indian families for placement;
5. Efforts made by the agency to ensure child's visitation with extended family, or, if none is available, with other tribal members, to ensure the child's ongoing participation in his/her culture; and
6. Efforts made by the agency to coordinate with the child's tribe and family to attend significant cultural and important familial events.

Written Findings of Fact That the Court Must Make at the Permanency Hearing:

1. Whether the agency has identified the child's tribe;
2. Whether the agency sent proper notice of the hearing and a copy of the petition and advice of rights to the parent(s), Indian custodian (if any), and child's tribe by registered mail, return receipt;
3. Whether the tribe has been afforded a full opportunity to participate in the proceedings and, if so, whether the agency provided the child's tribe with copies of the petition, reports, and information concerning the child;
4. Why the child is in need of either continued placement outside the parent's home or continued supervision, articulating the clear and convincing evidence that continued custody of the child by the parent or Indian custodian would likely result in serious emotional or physical damage to the child;
5. Whether active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and eliminate the need for placement of the child outside the home of the parent or Indian custodian and whether the efforts were successful;
6. Whether the agency has made an ongoing, diligent search to locate extended family, a tribal member, or other Indian family for placement if the child is not already within a preference placement;
7. Assure that the findings are written in easily understandable language that allows the parent(s), or Indian custodian to fully understand what action they must take to have the child returned to their care (interpreter should be provided for parent or Indian custodian whose first language is not English); and
8. The court's determination of permanency and plan to return home, proceed to the
termination of parental rights, or a planned permanent living arrangement.

F. Termination of Parental Rights Hearing

Key Decisions the Court Must Make:
1. Whether written notice was provided to the child's tribe by registered mail, return receipt requested;
2. Whether written notice was provided to the parents or Indian custodian by registered mail, return receipt requested;
3. Whether active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family;
4. Whether efforts were made to ensure that the parent understood the case plan if the parent does not read English;
5. Whether the active efforts were unsuccessful; and
6. Whether there is evidence beyond a reasonable doubt, including testimony of an expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Written findings of fact and conclusions of law must:
1. Specify whether active and reasonable efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family;
2. Specify what evidence, including testimony of a qualified expert witness, supports the finding beyond a reasonable doubt that continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child;
3. Specify any other state statutory grounds supporting termination of parental rights if state law requires satisfaction of dual burden of proof;
4. For uncontested termination of parental rights, the findings of fact and conclusions of law must also include:
   a. Thorough description of the conditions and circumstances under which parental consent to termination of parental rights was obtained. Parental consent must be executed in writing in the presence of the judge and must be accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and that the parent or Indian custodian fully understood these terms;
   b. Certify that either the parent or Indian custodian fully understood the explanation of the terms and consequences of the consent to termination of parental rights in English, or that it was interpreted into a language that the parent or Indian custodian understood;
   c. Certify that the consent to termination of parental rights was not given prior to or within ten days after the birth of the child, as the consent would not be valid under these circumstances;
   d. Determine whether the consent was voluntary and informed, that it was not obtained through fraud or duress, and that all alternatives to termination of parental rights were explained; and
   e. If termination of parental rights was uncontested because the parent failed to appear, or appeared but neither contested nor consented to termination, the above
items will apply.

G. Adoption Hearing
At the Adoption Hearing, the court must determine whether written notice was provided to the child's tribe by registered mail, return receipt requested, even if the child's tribe has not been a party to any prior proceedings related to the welfare of the child.

The court must also make the following written findings of fact and conclusions of law:
1. Whether the child is within the exclusive jurisdiction of a tribe because the child either resided or was domiciled on a reservation or was already a ward of a tribal court at the time that the child custody proceedings began, thereby depriving the state court of jurisdiction;
2. Whether all the necessary consents to adoption have been provided, including the consent of the agency with the custody of the child, the consent of the child (if the child is old enough that consent is required under state law), and the consent of parent or Indian custodian whose rights have not been terminated;
3. Thoroughly describe the conditions and circumstances under which parental consent to adoption was obtained. When there has been no prior termination of parental rights, parental consent must be executed in writing in the presence of the judge and must be accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and that the parent or Indian custodian fully understood these terms;
4. Certify that either the parent or Indian custodian fully understood the explanation of the terms and consequences of the consent to adoption in English, or that it was interpreted into a language that the parent or Indian custodian understood;
5. Certify that the consent to adoption was not given prior to or within 10 days after the birth of the child, as the consent would not be valid under these circumstances;
6. Whether the consent was voluntary and informed, that it was not obtained through fraud or duress, and that all alternatives to adoption were explained;
7. Whether the child is placed in an adoptive home where the adopting individual is a member of:
   a. The child's extended family;
   b. The child's tribe; or
   c. Another Indian family;
8. If the child is not placed in one of the placement preferences established by federal law, a determination whether:
   a. The agency made a diligent search to locate a placement that meets the preferences established within the ICWA;
   b. There is good cause not to place the child according to the placement preferences;
   c. The child's tribe established a different order of preference by resolution;
   d. If the child's tribe established a different order of preference for placement, ascertain whether the placement is the least restrictive setting which most approximates a family and in which the child's special needs, if any, may be met;
   e. The child's consenting parent evidenced a desire for anonymity, in which case the court shall give weight to that desire in applying the preferences;
9. Other determinations required for all adoptions;
10. At contested adoption hearings, determine whether the adoption should be granted.
    A contested adoption hearing must be conducted with procedural fairness, and should
    include notice to the parties and the child's tribe even if the tribe has not yet become a
    part in previous stages of the child custody proceedings;
11. Conclude the proceedings without undue delay, applying principles of case flow
    management;
12. The court which enters the final decree of adoption must, upon application, inform
    the Indian child who has reached the age of 18 of the tribal affiliation, if any of the
    individual's biological parents and provide such other information as may be
    necessary to protect the rights flowing from the individuals' tribal relationship.

III. Resource - Contact Information

State ICWA Liaison for Ohio:

Carrie Anthony, Chief
Child Welfare Policy and Placement Section
Ohio Department of Job and Family Services
50 West Town Street, 6th Floor
Columbus, Ohio 43215
Phone (614) 752-0660

U.S. Department of Interior Offices

Bureau of Indian Affairs
ICWA Response Center
Assistant Secretary
1001 Indian School Road
NW Albuquerque, NM 87104

Bureau of Indian Affairs  Bureau of Indian Affairs
Central Office        Midwest Regional Office
Assistant Secretary   Regional Director
1849 C. Street, N.W.  One Federal Drive, Room 550
Washington, D.C. 20240  Ft. Snelling, Minnesota 55111
Phone (202) 208-7163  Phone (612) 713-4400

National Resource Centers

National Indian Child Welfare Association
Terry Cross, Executive Director
INSTRUCTIONS

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