

# INDIAN CHILD WELFARE SERVICES

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### Section 307.10 Purpose

The purpose of the Indian Child Welfare Act of 1978 is to promote the identity of Indian children and their connection or affiliation with their Indian tribe. The Department recognizes that Indian children are central in the maintenance of Indian tribal culture, traditions and values. The following procedures outline how the Department shall, in conjunction with Indian communities, organizations and agencies, provide a method of early identification of Indian children and their families in order to provide child welfare services that assure all the additional protections afforded by the Indian Child Welfare Act.

### Section 307.15 Definitions

**“Active Efforts.”** For purpose of this Procedure 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:

- a) Conducting a comprehensive assessment of the circumstances of the Indian child’s family, with a focus on safe reunification as the most desirable goal;
- b) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
- c) 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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- d) 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;
- e) 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;
- f) Taking steps to keep siblings together whenever possible;
- g) 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;
- h) Identifying community resources including housing, financial, transportation, mental health, substance use disorder, 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;
- i) Monitoring progress and participation in services;
- j) 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;
- k) Providing post-reunification services and monitoring. [25 CFR 23.2]

**“Bureau of Indian Affairs (BIA)”** means an agency of the federal government of the United States within the U.S. Department of the Interior that is responsible for the administration and management of land held in trust by the United States for Native Americans in the United States, Native American Tribes and Alaska Natives.

**“Child Welfare Contributing Agency (contributing agency)”** refers to a public or private entity that, through a contract or agreement with the Department, provides placement services, child welfare case management, or a combination of both for children and families.

**“Continued Custody”** refers to physical custody, legal custody, or both, under any applicable Tribal law, 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.

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**“Custody”** refers to physical custody, 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, Tribal custom, or State law.

**“Department”** means the Department of Children and Family Services.

**“Department’s System of Record”** means the primary system for recording data and information maintained by the Department, this includes the system formerly known as the Statewide Automated Child Welfare Information System (Illinois Connect formerly referred to as SACWIS).

**“Extended family member”** means family as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of 18 and who is the Indian child's grandparent, parent’s sibling, sibling, sibling-in-law, sibling’s child, first or second cousin, or step-parents. [25 U.S.C. § 1903(2)]

**“Indian”** means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of the Regional Corporation as defined in 43 USC 1606.

**“Indian child”** means any unmarried person who is under age 18 and is either a member/citizen of an Indian tribe, or is eligible for membership/citizenship in an Indian tribe and is the birth child of a member or citizen of an Indian tribe. Some tribes recognize legal as well as birth family. (Check with a DCFS ICWA Specialist regarding those tribes.)

**“Indian Child Welfare Act (ICWA)”** means a federal law, passed by the U.S. Congress in 1978, for the purposes of protecting the best interest of the ‘Indian child’; promoting stability and security of Indian tribes and families; compliance with federal minimum standards before removing an Indian child; and preference of placement of Indian children in foster, adoptive homes, or both that reflect the unique values of Indian culture.

**“Indian Child Welfare Advocacy Program (ICWA Program)”** means a program of the Department that assists and supports permanency staff in identifying Indian children in the Department’s custody or guardianship and ICWA compliance.

**“Indian child's tribe”** means the Indian tribe in which an Indian child is a member or eligible for membership as determined by the tribe; 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 with which the Indian child has the significant contacts.

**“Indian custodian”** means any Indian person who has legal custody of an Indian child under applicable tribal law or custom or under applicable State law or to whom temporary physical care, custody, and control has been transferred by the parent of the child. An Indian may demonstrate that they are an Indian custodian by looking to Tribal law or Tribal custom or State law.

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**“Indian tribe”** means any Indian tribe, band, nation or other organized group or community of Indians federally recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 USC 1602(c).

**“Indian Child Welfare Specialist (ICWA Specialist)”** is an enrolled member of a Native American Indian Tribe. The Specialist is familiar with the Native American (NA) community, participates in NA community outreach, and is a primary contact person for an ICWA case who assists and supports permanency staff regarding ICWA compliance in child custody proceedings. The ICWA Specialist also acts as a liaison between State/Nationwide tribal child welfare staff and Illinois permanency staff.

**“Involuntary Proceeding”** means a child-custody proceeding in which a parent does not freely consent to foster care, preadoptive, or adoptive placement, or to the termination of parental rights. It also applies in cases where a parent consents to such placements under the threat of child removal by a State court or agency

**“Parent”** means the birth parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The term does not include the unwed father where paternity has not been acknowledged or established.

**“Qualified Expert Witness (QEW)”** means:

- a member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices; or
- a lay expert witness is not an expert on ICWA, but an expert on the child's tribe, having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or
- a professional person having substantial education and experience in the area of their specialty. (See Indian Child Welfare Act Checklists for Juvenile and Family Court Judges, Permanency Planning for Children Department, National Council of Juvenile Justice and Family Court Judges, June 2003, P.O. Box 8970, Reno, Nevada 89507.)

**“Secretary”** means the Secretary of the United States Department of the Interior.

**“Tribal court”** means a court able to assume jurisdiction over child custody proceedings that is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe that is vested with authority over child custody proceedings.

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### Section 307.20 Identification of Native American/Alaskan Native Children

#### a) Ask about Indian Lineage

State Central Register (SCR) call floor workers shall identify American Indian or Alaskan Native children (hereinafter “Indian children”) when taking information during the initial child protection call by asking the reporter if the child is an Indian child or if one or both of the parents is of Indian lineage. The call floor worker shall document information obtained regarding the child’s Indian heritage on the intake form.

The assigned Permanency Worker from the Department or contributing agency shall continue to make concerted attempts at identification of Indian children by asking the child, the child's parents, other relatives, guardian, or custodian, and staff of any agency or an individual known to be involved with the child if the child is an Indian child or if one or both parents of the child is of Indian lineage. The Permanency Worker shall document information pertaining to a child’s potential Indian lineage in a contact note. The Permanency Worker shall continue to inquire about a child’s potential Indian heritage throughout the life of the case including making additional inquiries at the point of transfer of the case to a new Permanency Worker.

In some jurisdictions, the judge or Assistant State’s Attorney will inquire about a child or family’s Indian lineage.

#### b) Determine Indian Lineage

The Department and contributing agency shall follow the guidelines established by the Bureau of Indian Affairs in determining whether there is reason to believe that a child may be an Indian child. A child should be considered to be potentially eligible for services under the ICWA when:

- 1) Any party to the case, Indian tribe, Indian organization or public or private agency informs the court that the child is an Indian child;
- 2) Any public- or state-licensed agency involved in child protection services or family support had discovered information that suggests that the child is an Indian child;
- 3) The child who is the subject of the proceeding, or a family member of the child, or both gives the court reason to believe the child is an Indian child;
- 4) The residence or domicile of the child, the child’s birth parents, or the Indian custodian is known by the court to be, or is shown to be a predominantly Indian community; or
- 5) An officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

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Whenever there is information suggesting that a child may be of Indian heritage, the Permanency Worker shall notify the court that the child may be an Indian child and eligible for services according to the Indian Child Welfare Act. The Clerk of the Circuit Court where the case is pending shall provide notice of the hearing to the identified tribe and all parties in accordance with the Juvenile Court Act and Section 1912(a) of the Indian Child Welfare Act.

The Permanency Worker shall also contact the Department's Indian Child Welfare Advocacy Program for appointment of an ICWA Specialist and assistance in verification of the child's Indian lineage and eligibility for services under ICWA whenever there is reason to believe that a child involved with the Department may be an Indian child. Verification does not supplement notice. The ICWA Specialist acts as a liaison between the court, the child's Permanency Worker and the tribal representative(s) for the child's Tribe. The ICWA Specialist works with tribal representatives nationwide to verify a child's eligibility status under ICWA, as well as to ensure that the provision of child welfare services are consistent with its mandates. The ICWA Specialist shall provide the following supports:

- facilitate communication between the Department/contributing agency and Native American Indian child welfare representative(s);
- provide verification assistance and support for the purpose of identifying Native American Indian children in DCFS custody or guardianship;
- provide information regarding ICWA for support and advocacy purposes to ensure compliance with ICWA;
- attend Child and Family Team meetings, Administrative Case Reviews, court hearings and case related meetings; and
- recruit American Indian/Alaska Native foster parents.

The child's Permanency Worker shall make a referral to the Division of Diversity, Equity and Inclusion by:

- faxing a completed CFS 307 Indian Child Welfare Advocacy Program Intake Form to **(312) 328-2803**; or
- emailing a completed form **CFS 307** to the "DCFS.DEI@illinois.gov..

Upon receipt of the referral, the ICWA Supervisor will assign an ICWA Specialist to the case. The ICWA Supervisor shall send an email to both the Permanency Worker and the ICWA Specialist notifying them of assignment of the case to the ICWA Specialist.

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The ICWA Specialist shall contact the Permanency Worker via DCFS Outlook email and provide the Permanency Worker with a **CFS 307, Indian Child Welfare Advocacy Program Intake Form**. The Permanency Worker shall complete the Intake form and return it to the ICWA Specialist for use in determining the child's Indian lineage.

The ICWA Specialist shall prepare and send a 'Tribal Inquiry Letter' to the specified tribe(s), via certified mail, within 55 business days of receipt of the completed Intake form. The Tribal Inquiry Letter shall request written verification from the tribe(s) as to whether the child is deemed an Indian child under ICWA. The ICWA Specialist shall send a copy of the letter to the Permanency Worker and Permanency Supervisor.

If there is insufficient information available to determine which tribe(s) a child is believed to be affiliated with, the ICWA Specialist shall contact the United States Department of the Interior, Bureau of Indian Affairs (BIA) for assistance in verification of the child's Indian lineage.

The ICWA Specialist shall send the Tribal Inquiry letter and Family Tree Form, via certified mail with return receipt requested, to the BIA at:

Minneapolis Regional Director,  
Bureau of Indian Affairs,  
5600 American Blvd. W, Ste. 500,  
Bloomington, MN 55437.

The ICWA Specialist shall provide a copy of the BIA's response to the Permanency Worker. The ICWA Specialist shall provide the Permanency Worker with written documentation from the identified tribe via fax, email /or mail, including the tribe's response to the inquiry regarding the child's membership or eligibility for membership enrollment. Once a tribe has identified the child as a member or as being eligible for membership, the ICWA Specialist shall request a letter of intention from the tribal representative asking whether the tribe would like to intervene in the case, the level of intervention, and whether the tribal court plans to seek jurisdiction of the case.

If the tribal representative indicates an interest in participating in the Illinois Title IV-E Program, the assigned Permanency Worker or the ICWA Specialist shall notify the DCFS Manager of Federal Financial Participation in Springfield. The Manager of Federal Financial Participation shall coordinate with the regional HHS-ACF Representative and, in consultation with the tribal representative, establish a Title IV-E Agreement that will not affect children's eligibility, receipt of services, or payment under Title IV-E or the medical assistance program operated under Title XIX.

The ICWA Specialist shall provide the Permanency Worker and tribal representative with contact information for one another so that the Permanency Worker may actively engage the tribal representative in case involvement and permanency planning for the child and family.

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### Section 307.25 Notification of Proceedings

#### a) Non-Emergency Involuntary Proceedings

When petitioning the juvenile court for guardianship of an Indian child, the Permanency Worker shall provide the following information in a report to the court:

- the child's name and age, and the address from which the child was removed;
- the name and address of the child's parents, guardian and Indian custodian, if any. If the whereabouts of the parents, guardian or custodian are unknown, the Permanency Worker shall include a detailed explanation of the efforts made to locate them and attach a copy of the Diligent Search report;
- the tribal affiliations of the child and the parents, guardian and Indian custodian; and
- a statement of the specific services offered to assist the parents, guardian or Indian custodian so the child may remain at home or safely be returned to their custody. The Permanency Worker shall include a description of the qualifications of the service provider to work with Indian families and a detailed description of the services that were accepted or rejected, the parents' level of cooperation and any other information that would help clarify the relevance of these services to the child's safety.

The Clerk of the Circuit Court (or State's Attorney's Office) where the case is pending shall provide notice of the hearing to all parties in accordance with the Juvenile Court Act and the Indian Child Welfare Act. ICWA requires that notice be sent by registered mail. The Permanency Worker shall maintain a copy of the original notice and proof of service.

#### b) Emergency Involuntary Proceedings

The Department shall notify the child's parents, guardian or Indian custodian and the child's tribe by registered mail, return receipt requested, within 10 days after determining that an Indian child is the subject of a proceeding under Article II of the Juvenile Court Act or for termination of parental rights.

If the identity or location of the parents, guardian or Indian custodian and the tribe cannot be determined, the Department shall notify the Secretary by registered mail, with return receipt requested. The Secretary shall have 15 days after receipt to provide the requisite notice to the parents or Indian custodian and the tribe.



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When requesting temporary custody of an Indian child who was taken into protective custody and placed in substitute care, the Permanency Worker shall provide the juvenile court with the information required in subsection (a) above, to the extent it is available.

The assigned Permanency Worker shall pursue the remaining information in later interviews, and shall ensure that information obtained at a later time is provided to the court.

No proceeding for adjudication of wardship or for termination of parental rights under the Juvenile Court Act shall be held until at least 10 days after receipt of notice by the parent, guardian or Indian custodian and the tribe, or by the Secretary. The parent, guardian or Indian custodian or tribe shall, upon request, be granted up to 20 additional days to prepare for the proceeding in accordance with Section 1912(a) of ICWA [25 USC 1912(a)].

In an emergency removal situation, there is no need for the Department to demonstrate compliance with Section 1912(d) before removal of the Indian child as imminent danger shall take precedence.

### **Section 307.30 Transfer of Jurisdiction to Tribal Court or Transfer of Placement and Care Responsibility**

- a) **Transfer of Jurisdiction.** The Indian Child Welfare Act states that “in any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child’s tribe shall have a right to intervene at any point in the proceeding.” [25 USC 1911]
- 1) The child’s tribe, Indian custodian or the parent may request at any time, orally on the record or in writing, a transfer of the case to the tribal court. The juvenile court shall transfer the case to the tribal court unless the tribal court declines jurisdiction, the juvenile court finds good cause not to transfer the case, or a parent objects to the transfer.
  - 2) If removal to a tribal court is not granted or sought, the tribal court shall have a right to intervene at any point in the proceeding.
  - 3) In the event a single tribe’s claim cannot be established because of multiple tribal claims of the right, the Department shall not participate in the intertribal dispute unless specifically requested by the tribes to aid in the resolution of the conflict.

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**b) Transfer of Placement and Care Responsibility.** The transfer of placement and care responsibility can be given to the tribal entity.

1) If the jurisdiction is transferred to the tribal court, the tribe assumes transfer of placement and care responsibility. Transfer of placement and care responsibility can be to either a:

- tribal Title IV-E agency; or
- Indian tribe with a Title IV-E agreement with the Department.

If the tribe is interested in obtaining placement and care responsibility and the tribe is not a tribal Title IV-E agency or a Title IV-E agreement is not already in place with the Department, a Title IV-E agreement must first be established prior to the transfer.

2) If the tribe intervenes in a juvenile court proceeding and the juvenile court confers upon the tribe custody and guardianship of the child, the tribe assumes transfer of placement and care responsibility. That responsibility may be assumed by either a:

- tribal Title IV-E agency; or
- Indian tribe with a Title IV-E agreement with the Department.

If the tribe is interested in obtaining placement and care responsibility and the tribe is not a tribal Title IV-E agency or a Title IV-E agreement is not already in place with the Department, a Title IV-E agreement must first be established prior to the transfer.

3) If the Department seeks a foster care placement on tribal lands consistent the ICWA provision on the Placement of Indian Children [25 USC 1915], the Department remains the Title IV-E agency.

**c) Interstate Compact on the Placement of Children (ICPC).** In the event jurisdiction is transferred to a tribal court and the child placed out of state, the ICPC shall not apply; Indian tribes are not subject to the ICPC.

**d) Permanency Worker Responsibility**

If there is any indication that a tribal court is seeking jurisdiction of the case, or the Indian tribe is considering placement and care transfer of the case, either the ICWA Specialist or the Permanency Worker shall notify the Manager of Federal Financial Participation should the Indian tribe, that is not a tribal Title IV-E agency, be interested in entering into a Title IV-E agreement in order to obtain placement and care authority.

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When the juvenile court transfers the proceedings to the tribal court or when placement and care responsibility is transferred to a tribe, at the time of the transfer, the Permanency Worker shall forward the following information and documents to the ICWA Specialist:

- 1) The child's name and date of birth;
- 2) The current placement information including a copy of the placement provider's foster family home license and previous placement information;
- 3) The name and address of the child's parents, guardian and Indian custodian, if any. If the whereabouts of the parents, guardian or custodian are unknown, include a detailed explanation of the efforts to locate them and attach a copy of the Diligent Search report. The Permanency Worker shall include information about the household from which the child was removed when DCFS obtained a legal relationship with the child (investigation or initial Integrated Assessment report);
- 4) All federal benefits a child may be entitled to, including the child's Title IV-E and Medicaid eligibility status (eligibility status shall not be impacted by the transfer). A copy of documentation to support the Title IV-E and Medicaid determinations can be obtained by emailing a request to [DCFS.BenefitCheckSubsidies@illinois.gov](mailto:DCFS.BenefitCheckSubsidies@illinois.gov);
- 5) A copy of the court orders entered in the case, including a judicial determination that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts were made to prevent the removal. The orders shall include the following:
  - Copy of the Transfer Order;
  - Copy of the Temporary Custody Order;
  - Copy of the Adjudication Order, if any; and
  - Copy of the Dispositional Order, if any;
- 6) The child's Social Security card or number;
- 7) The child's Family Case Plan, and education, medical records and documentation including, but not be limited to;
  - Health Passport;
  - Dental Reports;
  - Immunization Records; and
  - List of schools attended and educational records;

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- 8) Certified copy of the child's birth certificate;
- 9) Documentation and information regarding the child's religious background;
- 10) Death certificate(s) of the child's parent(s), if deceased;
- 11) Life book or compilation of personal history and photographs; and
- 12) List of known relatives, with relationships, addresses and telephone numbers, with the permission of the involved parties.

### e) ICWA Specialist Responsibility

- 1) The ICWA Specialist shall consult with the Indian Tribe on the transfer or responsibility for the placement of the child.
- 2) Either the ICWA Specialist or the assigned Permanency Worker shall notify the Manager of Federal Financial Participation should the Indian tribe, that is not a tribal Title IV-E agency, be interested in entering into a Title IV-E agreement in order to obtain placement and care authority.
- 3) The ICWA Specialist will send the documents received from the Permanency Worker to the tribe identified in the court order for case transfer.
- 4) The ICWA Specialist shall formally close the case in the Department's System of Record and shall include a case note including the child's name, purpose for closing the child's case and date.

### Section 307.35 Placement of an Indian Child

#### a) Substitute Care Placement

During the placement of an Indian child in foster care, the Permanency Worker shall maintain a detailed case note account of efforts to inform and engage identified tribal child welfare staff of all case planning meetings and staffings involving the child and family.

The Permanency Worker shall document compliance with the ICWA placement selection criteria and **Procedures 301.60** when completing the **CFS 2017, Child/Caregiver Matching Tool**, as well as in Part II of the Family Case Plan and in a case note. The Permanency Worker shall include an explanation of Department efforts to locate an appropriate placement for the child.

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A party seeking to accomplish a foster care placement of an Indian child must establish:

- that active efforts have been made to provide remedial and rehabilitative services designed to prevent the breakup of the Indian family but have been unsuccessful; and
  - by clear and convincing evidence, supported by the testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
- 1) In choosing a foster care or pre-adoptive placement, the Permanency Worker shall ensure that the child is placed in the least restrictive setting that most approximates a family, and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to the child's home, taking into account any special needs of the child.
  - 2) ICWA requires that the Permanency Worker give preference in the following order, absent good cause to the contrary, to the placement of an Indian child with:
    - a member of the Indian child's extended family (defined for purposes of ICWA as a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent);
    - a foster home licensed or approved or specified by the Indian child's tribe;
    - an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
    - an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs. [25 USC 1915(b)]
  - 3) For each placement in this preferred order that is deemed inappropriate, the Permanency Worker shall document the reasons why the placement was inappropriate.

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### b) **Adoptive Placement**

- 1) In choosing an adoptive placement, the Permanency Worker shall ensure the child is placed in accordance with the provisions of **89 Ill. Adm. Code 309 (Adoption Services for Children for Whom the Department of Children and Family Services Is Legally Responsible)**.
- 2) ICWA requires that the Permanency Worker or Adoption Worker give preference in the following order, absent good cause to the contrary, to the placement for adoption of an Indian child with:
  - a member of the Indian child's extended family (defined for purposes of ICWA as a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent);
  - other members of the Indian child's tribe; or
  - other Indian families. [25 USC 1915(a)]

### **Section 307.40 Retaining Custody of an Indian Child**

- a) When an Indian child is placed in substitute care, the Permanency Worker and the ICWA Specialist shall consult with members of the Indian child's tribe, Indian child welfare agencies, or Indian community organizations that have extensive knowledge of the child-rearing practices of that tribe regarding the observed or reported child-rearing practices of the child's Indian parent. If an Indian parent is using child-rearing practices that are customary for that tribe, use of these practices does not constitute clear and convincing evidence of harm, even if the practice is not acceptable in non-Indian communities.

The Permanency Worker shall invite the tribe to participate in all juvenile court proceedings (including sharing court contact information), all case related meetings including, but not limited to, Administrative Case Reviews and status hearings. The Permanency Worker shall also include the tribe in the design and implementation of the Family Case Plan. In addition, the Permanency Worker shall keep fluid communication with both the tribe and the ICWA Specialist regarding the child's progress throughout the life of the case.

- b) In addition, clear and convincing evidence of serious emotional or physical damage must be supported by the testimony of Qualified Expert Witness (QEW). For purposes of a juvenile court proceeding involving an Indian child, a QEW is:
  - a member of the Indian child's tribe who is recognized by the tribe as knowledgeable in tribal customs and child-rearing practices;

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- a person who has had experience in delivery of services to Indian families and who has extensive knowledge of child-rearing practices within the Indian child's tribe; or
  - a professional person having substantial education and experience in the area of Indian parenting practices.
- c) Each party to an involuntary placement proceeding involving an Indian child shall have the right to examine all reports or other documents that the Department may present during the proceedings.

### Section 307.45 Terminating Parental Rights

- a) If the permanency goal for the Indian child is “substitute care pending termination of parental rights”, the Permanency Worker shall document in detail all efforts set forth to achieve the provisions of the Family Case Plan, and the active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family. The Permanency Worker shall also document that these active efforts were unsuccessful.
- b) When the parent of an Indian child surrenders the child for adoption, the Permanency Worker shall document in a case note the date the surrender/consent was executed. Surrenders or consents for adoption of an Indian child shall be acknowledged before a judge in open court.
- c) For each potential adoptive home that was considered and rejected, the Permanency Worker shall document in a case note:
- the reasons why the home was found not suitable;
  - what services were offered to upgrade the home, including a specific explanation of whether a subsidized adoption was explored; and
  - whether the family accepted or rejected the services that were offered.

If the Indian child's tribe establishes a different order of preference for out-of-home placements, the Permanency Worker shall document the tribe's preference in a contact note. The Permanency Worker shall follow the tribe's preferred placement order when attempting to place the child, and shall document in a case note all attempts made to identify an appropriate adoptive placement.

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- d) Any termination of parental rights proceedings must include the competent testimony of a QEW to provide testimony indicating, beyond a reasonable doubt, 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. [25 U.S.C. 1912(f)]
- e) The requirement of testimony from a QEW assures that the termination of the parent-child legal relationship does not conflict with the specific cultural values of the child's tribe.