

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL	
	Chapter 2: Administration of Child Welfare	Effective Date: September 1, 2008
	Section 12: Indian Child Welfare Act (ICWA)	Version: 1

POLICY

The Indiana Department of Child Services (DCS) will ensure that any child who is a member of a federally recognized Indian tribe will be protected to promote safety, well-being, and permanency of Indian tribes and families.

DCS will make diligent efforts beginning at Intake, to determine if a child of American Indian heritage falls under the jurisdiction of the Indian Child Welfare Act (ICWA). These efforts will continue throughout DCS involvement with the child(ren) and family. DCS will comply with all rules, regulations and laws governing ICWA and make a diligent effort to identify those children and families subject to the Act.

DCS will notify the Tribe and/or Nation if a child is the subject of a child custody hearing and claims to be a member, or eligible for membership in the tribe. If DCS is unable to identify or locate the parent or Indian custodian of the child, and the tribe cannot be determined, and DCS believes the child is of American Indian heritage, DCS will contact the United States (U.S.) Secretary of Interior.

The parent or child asserting membership in a Indian tribe has the burden to show that the ICWA applies to the proceedings. Applicability of the ICWA depends upon whether the proceedings in question (Child in Need of Services, detention, Termination of Parental Rights, etc.) involve an "Indian child" within the definition utilized in 25 U.S.C. §1903(4). Whether or not a child is an Indian child for purposes of ICWA is determined by federal law and is not an arbitrary label assigned at the discretion of the parent.

DCS will not make a foster care placement or hold a termination of parental rights proceeding until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the United States (U.S.) Secretary of Interior: The parent or Indian custodian or the tribe can, upon request, be granted up to twenty (20) additional days to prepare for the proceeding. If there is imminent risk of physical harm, DCS will detain the child and immediately notify the parent or Indian custodian and the tribe or the U.S. Secretary of the Interior.

Code References

[25 U.S.C. §1911: Indian tribe jurisdiction over Indian child custody proceedings](#)

[25 U.S.C. §1922: Emergency removal or placement of child; termination; appropriate action](#)

[25 U.S.C. §1903\(4\): Indian Child Welfare Definitions](#)

PROCEDURE

The Family Case Manager (FCM) will:

1. Engage the child (if age appropriate) and family, during the first initial contact, to assist in determining if the child and/or family are of Native American heritage or eligible for membership;
2. If the Indian parent, guardian, or custodian states that they are a member of an Indian tribe or eligible for membership, the FCM will engage the family as to which tribe the family belongs to;
3. Immediately notify by telephone, the Indian tribe or Federal Bureau of Indian Affairs in which the family has identified they belong to or are eligible for membership, that there is a current DCS assessment and the Indian child is being detained. Notify the Tribe and/or Nation by registered mail with return receipt requested. The Tribe and/or Nation has ten (10) days to respond. Include the following in the registered mail:
 - a. Identifying information (e.g., parent(s) names and birth dates, grandparent's names, child(ren) name and birth date),
 - b. Reasons that led DCS to believe the child(ren) is of Indian heritage, and
 - c. Reason for removal and current court action (e.g., Detention Hearing, etc.).
4. Notify the U.S. Secretary of Interior if the identity or location of the parent or Indian custodian and the tribe cannot be determined. The U.S. Secretary of Interior has fifteen (15) days after receipt to provide the required notice to the parent or Indian custodian and the tribe.

The Supervisor will:

1. Ensure that the FCM is asking each child and/or family which DCS is involved if they are a member of an Indian tribe or eligible for membership; and
2. Assist the FCM to ensure adherence to ICWA.

PRACTICE GUIDANCE

N/A

FORMS

N/A

RELATED INFORMATION

Indian Child Welfare Act (ICWA)

The Indian Child Welfare Act of 1978 was enacted by Congress to assure that agencies meet the cultural needs of Indian children requiring out-of-home placement. It gives the Indian child's custodian or tribe the right to intervene and supersede proceedings for out-of-home placement or termination of parental rights. In addition, it requires that full faith and credit be given to the public acts, records, and judicial proceedings of an Indian tribe regarding child custody proceedings.

In Indiana, this Act has application to the Pokagon Band of Potawatomi because there is one(1) federally-recognized tribe within our state's geographical boundaries. If a case involving an Indian child comes to the attention of DCS, DCS is to contact the addresses below to verify the child's eligibility for tribal membership:

Federal Bureau of Indian Affairs
Social Services
711 Stewards Ferry Pike
Nashville, TN 37214
(615) 467-1700
webmaster@bia.gov

Pokagon Band of the Potawatomi Indian
Social Services Department
58620 Sink Road
Dowagiac, MI 49047
(269) 782-6323
Mark.Pompey@pokagon.com

Department of the Interior
1849 C Street, N.W.
Washington DC 20240
202-513-7621

If the child is a member of a tribe or eligible for membership in a tribe, the family has the right to protection under the ICWA. These rights apply to any child protection case, adoption, guardianship, termination of parental rights action, runaway or truancy matter or voluntary placement of children (foster care placements, termination of parental rights, pre-adoptive placements, adoptive placements, both voluntary and involuntary placements, divorce proceedings in which neither parent will get custody, transfers of placement, and juvenile delinquency proceedings where parental rights may be terminated.)

1. "Foster care placement" means any action removing an Indian child from the parent or Indian custodian for temporary placement in a foster home or institution or in 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;
2. "Termination of parental rights" means any action resulting in the termination of the parent-child relationship;
3. "Preadoptive placement" means 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; and
4. "Adoptive placement" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Indian Child

Any unmarried person who is under age eighteen and is determined by the tribe, Bureau of Indian Affairs, or Department of the Interior, and is either:

1. A member or eligible for membership of an Indian tribe as determined by the Tribe and/or Nation, the Bureau of Indian Affairs, or the Department of the Interior; or
2. Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

Indian Tribe

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 or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.