

Indian Child Welfare Act Compliance Desk Aid

for New York State Child Welfare Workers

The federal Indian Child Welfare Act (ICWA) became law in 1978, and in 1987 New York State amended the Social Services Law and State Regulations to reflect federal standards. Compliance is mandatory.*

Steps to Improve Compliance:

1. Identify Native American nation/tribe.
2. Provide tribal notification.
3. Engage tribe in service plan development.
4. Follow placement preferences.
5. Make active efforts to provide remedial services and rehabilitative programs.

Who Is an Indian Child?

*Definition of Indian Child:
Section 2 (36) of the Social Services Law*

Indian child shall mean any unmarried person who:

- (a) is under the age of 18, or
- (b) is under the age of 21, entered foster care prior to his/her 18th birthday, who remains in foster care, and who:
 - is a member of an Indian nation/tribe; or
 - is eligible for membership in an Indian nation/tribe; or
 - is the biological child of a member of an Indian nation/tribe and is residing on, or is domiciled within, an Indian reservation.

What Does Tribal Enrollment Mean?

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

How Do I Know If a Child Is Eligible for Tribal Membership?

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

What About Clan Identification?

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

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

Facts:

- There are nine recognized Native American nations/tribes in New York State and over 560 federally recognized tribes in the United States.
- The majority of Native Americans living in New York State do not reside on reservations. They live in rural areas as well as large urban centers, with an estimated 52,000 living in New York City and on Long Island.
- The New York State Office of Children and Family Services (OCFS) Native American Services office maintains a current list of tribal contacts who can assist you: (716) 847-3123.

**The provisions of the federal Multiethnic Placement Act (MEPA) do not affect the application of ICWA.*



New York State Statutory and Regulatory Requirements to Implement the Federal Indian Child Welfare Act

Notification Requirements

OCFS Regulation, 18 NYCRR 431.18 (c)

The social services district, in any child custody proceeding initiated by the district pursuant to Section 384-b of the Social Services Law or Article 7* or 10 of the Family Court Act, is required to notify the child's parent or Indian custodian and the child's Indian nation/tribe, by registered mail, of the pending proceeding and of their right to intervention. If the identity or location of the parent or Indian custodian and the nation/tribe cannot be determined, notice must be given by registered mail to the New York State Office of Children and Family Services (listed on p. 4) and to the federal government at this address:

U.S. Department of the Interior
Eastern Regional Office
Bureau of Indian Affairs
545 Marriott Drive, Suite 700
Nashville, TN 37214

Note: Because the ICWA notification requirements apply to "involuntary proceedings," Article 7 cases are included.

Tribal Notification Procedures

The contents of such notification of the child custody proceeding must include all of the following information:

- The child's name, date of birth, and place of birth.
- The child's tribal affiliation, if known.
- The names of the child's parents, dates of birth of the child's parents, places of birth of the child's parents, the child's mother's maiden name.
- A copy of the petition filed with the court.
- A statement of the rights of the biological parents/custodians to intervene in the proceeding.
- A statement of right under federal law to court appointed counsel.
- The location, mailing address, and telephone number of the court.

Qualified Expert Witness

OCFS Regulation, 18 NYCRR 431.18 (a) and (b)

This section states that the testimony of a qualified expert witness is required in any foster care placement and in any proceeding for the termination of parental rights. This witness is defined as a person who is qualified to speak on whether continued custody by the parents of an Indian child or an Indian custodian is likely to result in serious physical or emotional injury to the child.

Reasonable Efforts to Prevent Placement of an Indian Child

ICWA requires that in any child custody proceeding initiated by the social services district pursuant to Section 358-a or 384-b of the Social Services Law or Article 7 or 10 of the Family Court Act, which involves an Indian Child, the social services district must demonstrate that **active efforts** have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian Family and that these efforts have proved unsuccessful.

Foster Care Placement Preferences

OCFS Regulation, 18 NYCRR 431.18 (f) (1)

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

- First**, a member of the child's extended family;
- Second**, a foster home certified, approved or specified by the Indian child's nation/tribe and approved by the appropriate social services district;
- Third**, an Indian foster home certified or approved by an authorized agency to provide foster care services; or
- Fourth**, an institution for children approved by an Indian tribe or operated by an Indian organization which has a program to meet the needs of the child.

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

Adoption Placement Preferences

OCFS Regulation, 18 NYCRR 431.18 (g) (1).

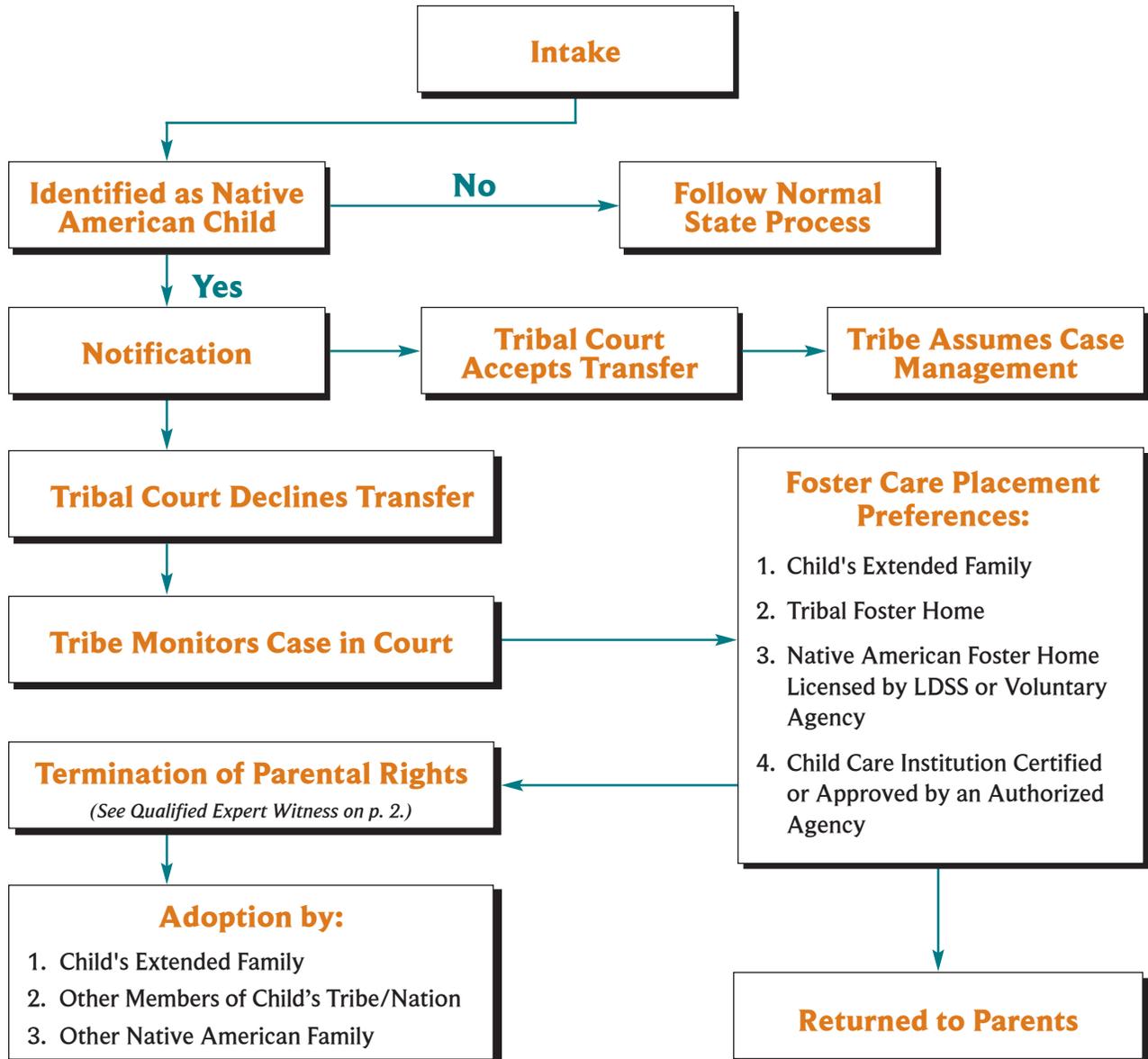
This section establishes a required order of preference in an adoptive placement of an Indian child. An authorized agency providing adoption services to an Indian child is required, in the absence of good cause to the contrary, to place the child with:

- First**, a member of the child's extended family;
- Second**, other members of the child's Indian nation/tribe; or
- Third**, other Indian families.

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



Indian Child Welfare Process



Coding Guidelines

Once a child has been identified as a Native American child, it is necessary to identify the child as a Native American child in WMS and CCRS. When encoding the WMS Services Application, child welfare workers should enter **04 (Indian on NYS Reservation)** under the State Charge Field (SF). If any children in the WMS Services Case are to be tracked in CCRS (meaning that they would be in receipt of protective, adoptive, or foster care services), enter **I** under the Ethnicity column. These children would also be in CONNECTIONS, where “Native American” should be checked in their Person Demographics.

Systems questions should be directed to **OCFS IT Operations:**
1 (800) 342-3727



New York State Indian Nations/Tribes

Iroquois Nations:

(State and Federally Recognized)

Cayuga Nation

P.O. Box 803
Seneca Falls, N.Y. 13148
(888) 532-4847

Oneida Indian Nation

Oneida Indian Nation Member Benefits
577 Main Street
Oneida, N.Y. 13421
(315) 829-8337

Onondaga Nation

Onondaga Nation Council of Chiefs
P.O. Box 85
Nedrow, N.Y. 13120
(315) 469-1875

Seneca Nation

Allegany Reservation
P.O. Box 231
Salamanca, N.Y. 14779
(716) 945-1790

Cattaraugus Reservation
12387 Route 438
Irving, N.Y. 14081
(716) 532-4035

St. Regis Mohawk Tribe

412 State Route 37
Akwesasne, N.Y. 13655
(518) 358-4516

Tonawanda Band of Senecas

7027 Meadville Road
Basom, N.Y. 14013
(716) 542-4244

Tuscarora Nation

2015 Mount Hope Road
Lewiston, N.Y. 14092
Cell: (716) 622-7061
Cell: (716) 417-7764
Office: (716) 297-0598

Algonquin Nations:

(State Recognized Only)

Shinnecock Indian Nation

P.O. Box 1268
Southampton, N.Y. 11969
(631) 287-6474

Unkechaug Indian Nation

Poospatuck Reservation
P.O. Box 86
Mastic, N.Y. 11950
(631) 281-6464



For further information on Native American Programs, see *A Proud Heritage: Native American Services in New York State* (OCFS Publication #4629) and *A Guide to Compliance of the Federal Indian Child Welfare Act in New York State* (OCFS Publication #4757).

If you are unclear about your responsibility,
please immediately contact:

**New York State
Office of Children and Family Services**
Native American Services
295 Main Street, Suite 545
Buffalo, N.Y. 14203
(716) 847-3123

