

DCF Policy #88-001

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INDIAN CHILD WELFARE ACT POLICY

This policy specifies procedures to be followed in the event of out-of-home placement of a child of American Indian or Alaskan Native origin. *[For purposes of this policy, "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688,689).] An "Indian child" is defined as any unmarried person who is under age 18 and is either (a) a member of an Indian tribe, or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.]* Massachusetts will apply this policy and these procedures only to members of federally recognized tribes.

POLICY

It is the policy of the Department that to the maximum extent possible a child's Indian heritage shall be preserved by (1) placement with extended family; (2) placement with a foster parent of the child's tribe; (3) placement with a foster family of another Indian tribe; (4) placement in a non-Indian foster family which has been approved by an Indian tribe or is operated by an Indian organization; or (5) placement with a non-Indian foster family which exhibits a willingness and sensitivity to respect and nurture the child's Indian heritage. It is also the Department's policy that the placement of all children to whom the Indian Child Welfare Act (ICWA), Department *Regulation 110 CMR 1.07*, and this policy apply, will be coordinated by the ICWA Coordinator in the Office of the Deputy Commissioner for Field Operations.

PROCEDURES

- 1. Child Entering Placement.** Whenever a Department Social Worker learns or suspects that a child, who is in or is about to enter Department care or custody, is or may be of Indian origin, the Social Worker actively inquires about this aspect of the child's background as soon as possible. The Social Worker immediately contacts the designated Regional manager and the ICWA Coordinator in the Department's Central Office to identify that a child of Indian origin is in or is about to enter the care or custody of the Department. If the parent or child has a tribal identification card which verifies membership, the Social Worker records the information in the case record. If no tribal identification card exists, the Social Worker obtains the following information:
 - child's tribal affiliation(s)
 - parent's tribal affiliation(s)
 - tribal location(s) (if known)
- 2. Determining Tribal Membership.** The ICWA Coordinator thereafter pursues the child's tribal membership or eligibility for membership, based upon the information obtained by the Social Worker. Upon receipt of the response from the tribe, the ICWA Coordinator informs the Social Worker and forwards copies of any correspondence for inclusion in the physical case record.
- 3. Voluntary Placement Agreements.** Unlike ordinary Voluntary Placement Agreements (see *Policy #90-004, Placement Prevention and Placement Policy*) a Voluntary Placement Agreement involving a child of Indian origin must be taken in front of a judge. The judge must ensure and certify (by signing the Voluntary Placement Agreement) that the parent understands the document (including any linguistic barriers), and the signing cannot occur until at least 10 days after the child's birth. (See 25 U.S.C. Sec. 1913)
- 4. Contested Custody (C&P, 210, etc.) Court Proceedings.** Like ordinary contested custody court proceedings, advance notice must be given to the parents or custodian. Unlike ordinary contested custody court proceedings, in state court proceedings involving a child of Indian origin certain additional procedures prescribed by the ICWA must be followed. Most importantly, 10 days advance notice must also be given to all tribes in question. This tribal notice is accomplished by the ICWA

Coordinator, but it is the duty of the Social Worker to inform the ICWA Coordinator of the anticipated court proceeding. Note that nothing precludes any necessary emergency or ex parte court action, but notice will have to be given as soon as practicable thereafter. A tribe, parent, or Indian custodian entitled to notice of the child custody proceeding has a right, upon request, to be granted an additional 20 days from the date upon which notice was received to prepare for participation in the proceeding. The proceeding may not begin until all of the following dates have passed:

- 10 days after the parent or Indian custodian (or Secretary of the Interior where the parent or Indian custodian is unknown to the petitioner) has received notice;
- 10 days after the Indian child's tribe (or the Secretary of the Interior if the Indian child's tribe is unknown to the petitioner) has received notice;
- 30 days after the parent or Indian custodian has received notice if the parent or Indian custodian has requested an additional 20 days to prepare for the proceeding; and
- 30 days after the Indian child's tribe has received notice if the Indian child's tribe has requested an additional 20 days to prepare for the proceeding.

The above time limits are the minimum time periods required by the ICWA. The court may grant more time to prepare where state law permits.

5. **Adoption Surrenders.** Unlike ordinary Adoption Surrenders (see *Policy #90-003, Voluntary Adoption Surrender Policy*), Adoption Surrenders involving a child of Indian origin must be taken in front of a judge. The judge must ensure and certify (by signing the Adoption Surrender) that the terms and consequences of the document were explained in detail to the parent (including translator if necessary to overcome any linguistic barriers), and the signing cannot occur until at least 10 days after the child's birth. (See 25 U.S.C. Sec. 1913)
6. **Access to Adoption Information.** An adopted child of Indian origin, who is over age 18, has the right to have access to his records on file with or available to the Secretary of the Interior, to learn about his tribal affiliation(s) and tribal rights. The ICWA is not an open adoption law, but it does provide for disclosure to a child, once she/he is 18, of information regarding the child's tribal affiliation and membership.
7. **Confidentiality.** Requests for information or records concerning Indian children receiving services from the Department, or in the custody of the Department, made by an individual or entity other than an authorized representative of the child's tribe or the Secretary of the Interior, are handled in accordance with Department Regulations. (See *Regulation 110 CMR 12.00 et seq.*)