



NH Department of Health & Human Services
Division for Children, Youth & Families

DCYF Standard Operating Procedure

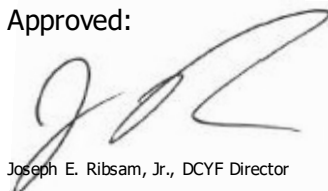
1510.2 MANAGING ICWA CASES WITH CONCURRENT JURISDICTION

Policy Directive: **21-01**

Approved:

Effective Date: **May 2021**

Implements Policy: **1510**


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This SOP defines how DCYF will collaborate with tribes on case management when a case has concurrent jurisdiction.

Procedure

The following information is to support the implementation of the above referenced policy. This document shall not preclude staff from using their professional judgement based on individual circumstances, consistent with the requirements of the policy.

- I. When there is concurrent jurisdiction, tribal child welfare caseworkers are partners with shared jurisdiction. Areas of collaborative practice may include, but are not limited to:
 - A. Reviews of DCYF and the Tribe's history with the parent(s)/Indian custodian(s);
 - B. Completion of interviews;
 - C. Requests for criminal background checks for the Indian child, parent(s), or Indian custodian(s) as needed and contacts with Tribal law enforcement;
 - D. Review of collateral information;
 - E. Preliminary safety decision-making by:
 1. Engaging in safety planning whenever signs of danger are present;
 2. Treating the tribal child welfare caseworker as an equal planner/decision maker in the safety planning process; and
 3. Considering the services that the tribal child welfare agency may be able to provide as part of safety planning; and
 - F. Making safety, permanency and well-being decisions.
- II. Casework and case planning activities align with the ICWA requirements first and then DCYF policies (specifically for placement preferences, emergency or ex parte hearings, involuntary foster care, and termination of parental rights proceedings).
- III. If tribal child welfare staff are unavailable, DCYF proceeds with decision-making by:

- A. Documenting the attempts to consult with the tribal child welfare caseworker; and
 - B. Informing the tribal child welfare caseworker of the decisions as soon as possible.
- IV. ICWA placement preferences will be treated as follows:
- A. When a foster care or pre-adoptive placement (25 CFR 23.131) will be used, the setting must be the least restrictive that most approximates a family setting which allows the Indian child's identified needs to be met and is in reasonable proximity to the Indian child's home, siblings, or extended family;
 - 1. Preference must be given in the following descending order, unless the tribe has established a different order:
 - (a) A member of the Indian child's extended family;
 - (b) A foster home licensed, approved, or specified by the tribe;
 - (c) A foster home headed by a tribal (or eligible) member licensed or approved by an authorized non-Indian licensing authority; or
 - (d) An institution approved by the tribe or operated by an Indian organization suitable to the Indian child's needs; and
 - B. When a child will be placed for Adoption (25 CFR 23.130), preference must be given in the following descending order, unless the tribe has established a different order:
 - 1. A member of the Indian child's extended family;
 - 2. Other members of the Indian child's tribe; or
 - 3. Other Indian families.
- V. If an Indian child needs placement and the ICWA placement preferences cannot be met, the following procedures must be followed for good cause to depart from placement preferences (25 CFR 23.132):
- A. The party asserting good cause to depart from the ICWA placement preferences has the burden to prove good cause exists by clear and convincing evidence;
 - B. The Circuit Court will base the determination on one or more of the following:
 - 1. The request of one or both of the Indian child's parents;
 - 2. The request of the Indian child if they are of sufficient age and capacity to understand the decision being made;

3. The presence of sibling attachment that can only be maintained through a particular placement;
 4. The Indian child's identified physical, mental, or emotional needs (e.g., specialized treatment services that may be unavailable in the community where families who meet the placement preferences live); or
 5. The unavailability of a suitable preferred placement after the Circuit Court determines a diligent search was conducted and that no preferred placements were identified; and
- C. For the purposes of placement preference determination, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community.

Frequently Asked Questions

Q1. ICWA references 'active efforts'- can you provide examples or additional information?

- A** To the extent possible, active efforts should be provided in a manner consistent with the social and cultural conditions and way of life of the Indian child's tribe.
- A** Active efforts are to be tailored to the facts and circumstances of the case and may include, but not be limited to, the following examples:
- i. Searching for, contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;
 - ii. Conducting a comprehensive assessment;
 - iii. Identifying appropriate services and resources, and helping the parents to overcome barriers;
 - iv. Actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing identified resources;
 - v. Identifying and inviting representatives of the Indian child's tribe to participate in family team meetings, permanency planning, and resolution of placement issues;
 - vi. 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;
 - vii. Considering alternative ways to address the needs of the Indian child's family if the optimum services do not exist or are not available;
 - viii. Supporting regular visits with parents or Indian custodians in the most natural setting possible during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child; and
 - ix. Providing post-reunification services and monitoring.

Q2. What are the consequences for violating ICWA?

- A** ICWA has specific consequences for violations. You may learn more by going to Section K of the [Guidelines for Implementing the Indian Child Welfare Act](#), published by the U.S. Bureau of Indian Affairs.

Glossary and Document Specific Definitions

A - B C - D E - F G - I J - L M - N O - Q R - S T - V W - Z

For the Purpose of this Document:

“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(s) or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan (25 CFR 23.2).

Document Change Log

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