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**Manual Transmission Letter (MTL)  
Family Programs Office: Statewide Child Welfare Policy Manual**

MTL # 0504-12132013

12-13-2013

TO: Lisa Ruiz-Lee, Director - Clark County Department of Family Services  
Betsey Crumrine, Social Services Manager V - DCFS – District Offices  
Kevin Schiller, Director - Washoe County Department of Social Services

FROM: Jill Marano, Deputy Administrator, Division of Child and Family Services

**POLICY DISTRIBUTION:**

Enclosed find the following policy for distribution to all applicable staff within your organization:

- 0504 ICWA

This policy is/was effective: 12-13-2013

- This policy is new. Please review the policy in its entirety
- This policy replaces the following policy(s): MTL # \_\_\_\_\_ - \_\_\_\_\_ Policy Name: \_\_\_\_\_
- This policy has been revised. Please see below for the type of revision:
  - This is a significant policy revision. Please review this policy in its entirety.
  - This is a minor policy revision: (List page number & summary of change):
  - A policy form has been revised: (List form, page number and summary of change):

**NOTE:**

- Please read the policy in its entirety and note any areas that are additionally required by your agency to be in compliance with the policy enclosed.
- This is an **All STAFF MEMO** and it is the responsibility of the person listed above to disseminate the policy enclosed to appropriate staff within his/her organization and to ensure compliance.
- The most current version of this policy is posted on the DCFS Website at the following address: [http://www.dcf.state.nv.us/DCFS\\_Policies\\_CW.htm](http://www.dcf.state.nv.us/DCFS_Policies_CW.htm). Please check the table of contents on this page for the link to the chapter you are interested in.

**0504.0 Indian Child Welfare Act** Indian Children as members of sovereign Tribal governments have a unique political status not afforded other children. This political status, as well as the history of biased treatment of Indian Children and families under public and private child welfare systems, is the basis for the enactment of the Indian Child Welfare Act (ICWA) of 1978, Public Law No. 95-608.

ICWA established minimal federal standards for the removal of Indian Children from their families, and required the placement of such children in foster or adoptive homes which reflect the unique values of Indian culture. Congress stated that there is “no resource that is more vital to the continued existence and integrity of Indian Tribes than their children;” pursuant to 25 U.S.C. ICWA §§1901. In Nevada, ICWA was embodied into state statute in 1995 to honor the provisions of the federal act.

**0504.1 Policy Approval Clearance Record (Use One)**

<input checked="" type="checkbox"/> Collaborative Policy	This policy supersedes: None	Number of pages in Policy: 13
Date Effective: MM/DD/YYYY		
PART Review & Approval	MM/DD/YYYY	Policy Lead: <u>NA</u>
DMG Approval	10/18/2013	Policy Lead: <u>Sharon James SPSII</u>
DMG Approved Revisions	MM/DD/YYYY	Policy Lead: _____
DMG Approved Revisions	MM/DD/YYYY	Policy Lead: _____
DMG Approved Revisions	MM/DD/YYYY	Policy Lead: _____
DCFS Administrator Approval:	10/18/2013	Signature: On file
Review by Representative from the Office of the Attorney General:	10/18/2013	Signature: On file

**0504.2 Statement of Purpose**

**0504.2.1 Policy Statement:** Nevada strives to comply with the letter of the law and the spirit of ICWA by keeping Indian Children connected and maintained with their Native families in their own Tribal communities if possible.

The Division of Child and Family Services (DCFS), the Clark County Department of Family Services (CCDFS) and Washoe County Department of Social Services (WCDSS) shall implement the ICWA policy which is designed to prevent the removal of Indian Children from their families and to promote the child remaining in the Native community if such removal is necessary.

**0504.2.2 Purpose:** The purpose of the ICWA policy is to provide best practice guidelines for the uniform application of the federal and state statute to child custody proceedings involving Indian Children in the care and custody of state and county child welfare agencies of Nevada.

**0504.3 Authority**

P.L. 95-608, Indian Child Welfare Act of 1978, 25 U.S.C. Chapter 21 §§ 1901-1963  
 NRS 432B.067, NRS 432B.068, NRS 432B.390, NRS 432B.397, NRS 432B.425, NRS 432B.451  
 NAC 127.042, 127.043, NAC 432B.263

## 0504.4 Definitions

### 0504.4.1

**Active Efforts** - is an action that is required of the state in caring for an Indian Child, mandated under the Indian Child Welfare Act (ICWA). While active efforts is undefined in ICWA, it refers to an effort more intense than the legal term "reasonable efforts." Active efforts applies to providing remedial and rehabilitative services to the family prior to the removal of an Indian Child from his or her parent or Indian custodian, and/or intensive efforts to reunify an Indian Child with his or her parent or Indian custodian. Active efforts are required of any party seeking or maintaining an involuntary foster care placement of an Indian Child. The child welfare agency must satisfy the court 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. This requirement applies regardless of whether the child's Tribe has intervened in the proceeding. The standard is higher than the finding of "reasonable efforts" needed for a non-Indian Child; pursuant to 25 U.S.C. ICWA §§1912. Active efforts begin at the onset of the case and continue throughout the case; there is no legal definition of the term. (See Section 504.5.5)

**Adoptive Placement** – is the permanent placement of an Indian Child for adoption including any action resulting in a final decree for adoption.

**Child Welfare Worker** - is any Child Protection Services, Substitute Care, Adoption and Interstate Compact on the Placement of Children staff of a child welfare agency using this policy to address an ICWA situation.

**Extended Family Member** - is defined by the laws and customs of the child's Tribe, or in the absence of such law or custom, shall mean a person aged 18 or older and is the Indian Child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, or first or second cousin or stepparent.

**Domicile** – is a place of residence: the parent's true, fixed, and legally recognized place of residence, especially in cases of prolonged absence from the Tribal community.

**Foster Care Placement** - is any action removing an Indian Child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent(s) or Indian custodian cannot have the child returned on demand. Parental rights have not been terminated.

**Indian Child Welfare Act (ICWA)** of 1978 - is a federal law that governs jurisdiction over the removal of (Native American) Indian Children from their families. ICWA sets the minimum federal standards for nearly all Indian Child custody proceedings, including adoption, voluntary or involuntary termination of parental rights, removal and foster care placement of Indian Children, but excluding divorce and child delinquency proceedings. Public Law 95-608, 92 Stat. 3069, enacted November 8, 1978 codified at 25 U.S.C. §§ 1901-1963.

**Indian** - is a term used in U.S. federal language, including ICWA; to refer to any person who is a member of a federally recognized (Native American) Indian Tribe or Alaska Native village, or who is an Alaska Native and a member of a Regional Corporation.

**Indian Custodian** – is any person who has legal custody of an Indian Child under

Tribal law or custom or under state law; or to whom temporary physical care has been transferred by the child's parent.

**Indian Child** – is any unmarried person under age eighteen who is either a member of an Indian Tribe, or is eligible for membership in an Indian Tribe and is the biological child of a member of an Indian Tribe. Tribal membership and eligibility are determined by the Tribe; pursuant to 25 U.S.C. ICWA §§ 1903.

**Notice** – is a mandate to inform the Tribe, parent, and Indian custodian of a proceeding in which his or her interests may be affected; pursuant to 25 U.S.C. ICWA §§ 1912(a). ICWA mandates that notice is sent by registered mail with return receipt requested on all involuntary custody proceedings in a state court where the court knows or has reason to know that an Indian Child is involved and the foster care placement of the child or the termination of parental rights to the child is sought. *Failure to provide such notice can cause a jurisdictional defect that may result in any such proceeding to be overturned.*

**Parent** – is the biological parent or parents of an Indian Child or any Indian person who has lawfully adopted an Indian Child, including adoption under Tribal law or custom. The term does not include the unwed father where paternity has not been acknowledged or established.

**Pre-adoptive Placement** – is the placement of an Indian Child in a relative home, fictive kin home, or foster home in contemplation of a prospective adoption.

**Termination of Parental Rights** – is an involuntary court action that permanently ends the legal parent-child relationship. Termination frees the child for adoption.

**Tribal Court** - is a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of the Indian Tribe or any other administrative body of the Tribe, vested with authority over child custody proceedings.

**Tribal Intervention** - is Tribal intervention in a child custody case that occurs when a Tribe acts on its right to become a party to child custody proceedings.

#### 0504.5 Application:

- A. In order for ICWA to apply the first requirement is the presence of an Indian Child as defined by 25 U.S.C. §§1903(4): an unmarried person who is under the age of eighteen 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.
  1. If the worker has reason to believe that there is an Indian Child, for purposes of ICWA application; the case requires specialized case management including active efforts.

Child welfare workers should consult their supervisor and agency legal counsel.
- B. The child custody proceedings that ICWA applies to are: foster care placement, termination of parental rights, pre-adoptive placement or adoptive placement. (ICWA does not apply to divorce proceedings.)

### 0504.5.1 Inquiry:

- A. Child welfare workers shall inquire about the applicability of the Indian Child Welfare Act immediately upon a child being taken into protective custody. These efforts must be documented. If the information is not available at that time, on-going inquiries need to be made of both parents as the case progresses and as more information becomes available.
- B. Once a report with a disposition of investigation is created, child welfare workers will follow the Nevada Initial Assessment Policy Protocols. (If the Indian Child is domiciled on the reservation, colony or community or the Indian Child is a ward of Tribal court; child welfare worker should notify their agency legal counsel for transfer of jurisdiction to the Tribe.) If the parent, legal guardian or relative of the child indicates that the child is or may be an Indian Child, the agency shall ask the person to provide the information to confirm Tribal affiliation.
  1. Assess for Indian heritage: The child welfare agency shall make diligent inquiries and document in UNITY case notes, the active efforts to identify and confirm Tribal affiliation, pursuant to NRS 432B.397 which addresses the duty to inquire to determine whether a child is an Indian Child for purposes of ICWA application.
    - Following are some examples of points at which it would be appropriate to inquire on Indian heritage:
      - a) Intake, investigation, placement, reviews, when a new relative is identified or made known to the agency, case transfers, court hearings, child and family team meetings, permanency planning, adoption case staffing, and, throughout the life of the case.
    - Ask the parents and the relatives, including grandparents, aunts, uncles, and adult siblings about Tribal affiliation. Indians often use terms other than "Indian" to describe their ancestry. For this reason, the child welfare worker needs to inquire about "Native" ancestry as well as "Indian" ancestry. Fill-out and complete the Assessing for Indian Heritage form and place in case file. (See FPO504A).
    - The child welfare worker shall fill out the Ancestry Chart with the parents, caregivers, and/or relatives when Indian heritage is identified. (See FPO504B).
    - The child welfare worker shall complete UNITY windows American Indian Detail CFS021, American Indian Detail Reservation CFS413, and American Indian Detail Tribal Information CFS414.
      - a) The name and location of the Tribe to which the child belongs;
      - b) The enrollment number of the child, if the Tribe to which the child belongs has assigned such a number;
      - c) Whether the child has resided or been domiciled on a reservation or has been a ward of a Tribal court;
      - d) The name, including the maiden name, if any, and the enrollment number of each Indian relative of the child, including, but not limited to, the parents and grandparents of the child;

- e) The enrollment number of each Indian relative of the child, including, but not limited to, the parents and grandparents of the child, if the Tribe to which the relative belongs has assigned such a number; and,
  - f) If the child is an Alaskan Native, the name of the child's village or regional corporation.
- The child welfare worker shall record in writing the information provided by a parent(s), legal guardian or relative pursuant to this section.
  - The child welfare worker shall provide the court with verification that the inquiries were made for each child for whom a petition has been filed.
2. Find the address and listing of the Tribe on the Federal Register Designated Tribal Agents for ICWA Notice. (See FPO504D).
- The list of Designated Agents for ICWA Notice includes the Tribes, their addresses and Tribal officers for receipt of notice. The child welfare agency must obtain verification of a child's Indian status by requesting verification from an Indian Tribe.
  - Contact the Tribe(s) using the Determining Tribal Eligibility and Notice of Court Proceedings inquiry form (See FPO504C) and, fax or email the form to inquire and request confirmation of Tribal membership or eligibility of membership to the Tribe(s).
  - Send a copy to the Tribal social worker and/or the Tribal ICWA Director as well. Follow-up by phone call to the Tribal Designated Agent for service and document in UNITY case notes all attempts to contact and the response received.
  - Verification can be in the form of an affidavit, declaration, or other certified statement from the Tribe or Bureau of Indian Affairs.
  - Once confirmation is received on Tribal affiliation; document in UNITY window CFS414 American Indian Detail; with the name of the Tribe, and the date received.
3. The child welfare worker must continue to inquire about the child's Indian status throughout the life of the case and document the efforts in UNITY case notes and the American Indian detail screens.

#### **0504.5.2 Notice**

- A. A primary tenet of ICWA is the belief that the Indian Child's Tribe has a discrete interest, separate from the parent or Indian custodian, in any proceeding involving an Indian Child; pursuant to NRS 432B.425. That Tribal interest is protected throughout the proceeding and Tribal involvement is initiated through the provision of notice to the Tribe(s). Notice is also a federal mandate; pursuant to 25 U.S.C. ICWA §§ 1912.
  - B. Voluntary in-home non-custodial cases do not necessitate notice to the Tribe, if the parent chooses and does not want their respective Tribe to know.
  - C. All involuntary child custody proceedings require mandatory notice to the Indian Tribe pursuant to state and federal law.
1. The child welfare worker shall find the address and listing of the Tribe(s) on the Federal Register ICWA Designated Tribal Agents for Notice (See FPO504D).

- If the child is affiliated with or eligible for membership in more than one Tribe, send the Petition and Notice to all Tribes for which the child may be eligible to enroll to ensure that the Tribe(s) are notified of all court dates.
  - Send by registered mail with return receipt requested; pursuant to 25 U.S.C. ICWA §§ 1912(a).
- D. When the child welfare agency knows who the child's Tribe is, a worker should send proper notice; pursuant to BIA Guidelines §B.5.
1. Proper Notice Requirements, notice of an involuntary proceeding must clearly state all of the following information:
- The name of the Indian Child.
  - The child's Tribal affiliation.
  - A copy of the petition, complaint, or other document initiating the proceedings.
  - The petitioner's name, along with the name and address of the petitioner's attorney.
  - A statement that the parents, Indian custodian, and Tribe all have a right to intervene in the proceedings.
  - A statement that the court will appoint counsel for the parents or custodian if they cannot afford one.
  - A statement that the parents or Indian custodian may have additional time to prepare for the proceedings, if needed.
  - The court's location, mailing address, and telephone number.
  - A statement that the parents, custodian, and Tribe all have a right to petition the court to transfer the case to the Tribal court.
  - The potential legal consequences of a current adjudication for the future custodial rights of the parents or custodian.
  - A statement that the child custody proceedings are confidential and that the Tribe must not share information about the proceedings with anyone who is not entitled to know it.
  - A statement that, since child custody proceedings are conducted on a confidential basis, all parties notified shall keep confidential the information contained in the Notice concerning the particular proceeding. The Notices shall not be handled by anyone not needing the information contained in the Notices to exercise the Tribe's rights under the Act.
- E. Notice to the parents, Indian custodian, and Tribe, are to be sent by registered mail with return receipt requested of the pending proceedings and the child welfare worker shall make copies and place in the case file. Notices are filed with the court and the child welfare worker shall record the Tribal notification date, court address, and date court notice was sent on UNITY Custody Notice window CFS039.
- F. Notice may be served in person and "actual notice," is served by giving it directly to the parents, Indian custodian and/or Tribe. The child welfare worker shall document on UNITY Custody Notice window CFS039 the date and time of service; if notice is provided in this manner.

- G. Proof of the notices sent including copies of notices sent and all return receipts and responses received, shall be filed with the court prior to the hearing and date mail received from registered receipt.
- H. Once all information is entered into UNITY windows; the child welfare worker may generate notice from UNITY Custody Notice window by printing the notice and sending by registered mail with return receipt requested.
  - 1. UNITY Custody Notice window CFS039 generates proper notice provided that the child welfare worker has completed all UNITY windows that capture Tribal information, including American Indian Detail CFS021, American Indian Detail Reservation CFS413, and Tribal Information CFS414. UNITY stores Tribal notification dates, court address, and the date the court notice was sent as well for documentation purposes. The child welfare worker shall mail to the Tribe, parents, and Indian custodians by registered mail with return receipt requested.
  - 2. The child welfare worker shall continue sending notices for every child custody proceeding throughout the life of the case.
    - Notice continues even if the Tribe does not respond.
    - Notice continues when the Tribe verifies membership or eligibility thereof.
    - Notice stops when a Tribe confirms that the child is not eligible for membership or is not a member.

NOTICE (IF INDIAN HERITAGE IS UNCERTAIN or IF TRIBE DOES NOT RESPOND)

- A. If you do not know how to contact the child's Tribe, or the Tribe does not respond to your letters of inquiry; contact the Bureau of Indian Affairs in Phoenix, AZ for proceedings in Nevada; pursuant to 25 C.F.R., Part 23.11(10) Regulations.
  - 1. Phoenix Area Office of the Bureau of Indian Affairs (BIA) of the U.S. Department of Interior. The Area Director's address is:

Area Director  
Bureau of Indian Affairs  
Phoenix Area Office  
1 North First Street PO Box 10  
Phoenix, AZ 85001-0010

    - Send by registered mail with return receipt requested, a copy of the inquiry letter, notice and petition, to the Area Director.
- A. ICWA 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;" pursuant to 25 U.S.C. ICWA §§ 1911.c.
  - 1. Intervening means that the Tribe becomes a party to the proceedings.



2. This intervention can be wide in its interpretation as the Tribe may choose to only monitor the case through court records, or the Tribe may participate fully in the case planning process.
3. When a Tribe intervenes it is entitled to receive service of all motions and legal documents from that point forward.

#### **0504.5.4 Transfer:**

- A. The Tribe or parents can at any point in the case request transfer of jurisdiction to Tribal court. Upon request from the Tribe or either of the parents; the court may transfer the case, unless the court finds good cause not to transfer.

In some instances, a parent may object to the transfer and the court may honor that request; pursuant to 25 U.S.C. ICWA §§ 1911.b.

1. The Tribe has its own internal judicial process that is followed for transferring jurisdiction, and the child welfare worker will consult with the agency legal counsel for transfer processes.

The child welfare worker should consult their supervisor and agency legal counsel.

#### **0504.5.5 Active Efforts:**

- A. A significant component of ICWA is the requirement that a child welfare agency 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 those efforts have proved “unsuccessful,” pursuant to 25 U.S.C. ICWA §§1912.d.
  1. The cornerstone of active efforts is rigorous collaboration through consultation with the child’s Tribe and early participation in all case planning decisions. The court must be satisfied that sufficient efforts were made to meet the “active efforts,” requirement, and this will be met on a case-by-case basis.
  2. The Bureau of Indian Affairs Guidelines specify that the active remedial efforts must take into account the prevailing social and cultural conditions and the way of life of the child’s Tribe and must also involve and use the available resources of the child’s extended family, the Tribe, Indian Social Service agencies, and individual Indian caregivers.
  3. The active remedial and rehabilitative efforts must be directed at remedying the basis for the parental removal proceedings; therefore, the type of services required depends on the facts of each case; pursuant to BIA Guidelines 44 Federal Register 67,584 and 67,592.

#### **B. PREVENT THE UNWARRANTED REMOVAL OF INDIAN CHILDREN FROM THEIR HOMES**

- A. The health and safety of the child are of paramount concern in every case. In some cases, the return of the child to the biological parent or Indian custodian may result in serious physical or emotional damage to the child. However, every case must receive active efforts, which should include at a minimum, a diligent assessment of the reasons for removal of the child, and an assessment of

present danger, impending danger safety threats, caregiver protective capacities and the need for safety plan services.

1. Active efforts include attempts to preserve the parent-child relationship regardless of the strength of the parent-child relationships or interaction.
2. Active efforts must be engaged to maintain the child in the home if possible; this is done by working closely with the family and monitoring closely. Following the intent of this law means including the Tribe at the earliest contact with the family and including them in all decisions if possible.
3. Active efforts include documentation in the case record demonstrating that, prior to petitioning for removal, active efforts were made to alleviate the need to remove the child. In case of an emergency removal, safety is paramount; and active efforts would be made to follow the order of placement preference, if necessary, pursuant to NRS 432B.390. The case record cannot simply state that such efforts were unsuccessful, but efforts must be shown to be unsuccessful. If the child is removed from the home for safety reasons, active efforts to reunify the family must be documented clearly.
  - Active efforts must take into account the Tribe's social and cultural conditions and way of life. Each Tribe has a unique language, Tribal customs, traditions and child rearing practices.
    - a) Use respectful inquiries by asking parents: Are there any relatives that should be involved?
    - b) Identify family strengths, by asking family members: What are your traditions and customs of your Tribe?
    - c) Ask the family about their Tribal way of life: Do you go to Tribal functions? Are you still connected to the Tribe?
    - d) It is through these respectful inquiries that communication, cooperation, and collaboration can lead to the formation of a successful case plan.
    - e) Document in UNITY case notes.
4. Active efforts are shown by the worker's attempts to assist in both arranging for the best fitting culturally competent services and helping families engage in those culturally competent services that are unique to their needs. Case plans should be developed in conjunction with the Tribe. Ask the Tribe what culturally appropriate services they may have available for their members. Case plans shall be written within 45 days of the placement and should include a written visitation plan. Frequent contact among the child, parents, and siblings is imperative to maintain cultural and family ties; unless there is a safety risk or threat of harm to the child.
5. Active efforts must continue throughout the duration of a child protection 432B case until reunification, guardianship, relinquishment, or termination of parental rights has been made regarding the child. At a minimum, the child welfare agency must maintain regular, documented contact with the child's Tribe through the designated Tribal

representative, make use of culturally appropriate services, and document active attempts to engage the parents in services to correct the underlying issues. Nevada's Guide to Active Efforts Matrix provides examples of active efforts. (See FPO504E).

- Examples of culturally appropriate services:
  - a) Indian Health Services
  - b) Wraparound in Nevada
  - c) Intensive Family Services
  - d) Invite the Tribal Social Worker to participate in family and child meetings
  - e) Transport the parent(s) to their appointments
  - f) Help parent(s) fill out applications
  - g) Connect parent(s) with Native American service providers.
  
- 5. Culturally-relevant approaches for case planning creates unique family specific case plans. The plan often specifies certain tasks to be done by family members. If those tasks directly affect the reunification and a family member has not completed the tasks, the child welfare worker will actively assist and support the family in completing the tasks and document all efforts to do so.
  
- 6. Given that a child's health and safety are the paramount concerns; the child welfare agency has an obligation, in consultation with the child's Tribe to offer relevant services to all members of the household who will have responsibility to provide care for the child even if that person does not have legal right to the child. The child's Tribe should be kept informed of the status of the case on an on-going basis regardless of whether the child's Tribe chooses to intervene or not. Although family decision making may look different from county to county, common elements may be:
  - All family and Tribal members who wish to be present are invited; the family can invite non-family who are part of their support network;
  - The child welfare worker convenes the meeting and encourages the family and Tribe to meet as a team; the child welfare worker may leave the room at some point to give the family and Tribe privacy to discuss the case;
  - The job of the family and Tribe is to make decisions to stabilize the family crisis and create a plan to ensure the child is safe and cared for;
  - The family presents and explains their plan to the child welfare worker, who has veto power – consensus can usually be reached; and, the court must ultimately decide whether to approve the plan.
  
- 7. The "active efforts" finding can be distinguished from the reasonable efforts finding in that the remedial and rehabilitative programs must consider the prevailing social and cultural conditions and way of life of the child's Tribe. All available resources should be used, including the extended family, the child's Tribe, and Indian social services. The parents' or Indian custodians' obligation to participate, begins when the

court made a finding on the allegation of the abuse/neglect and takes jurisdiction. When parents or Indian custodians agree to participate in services, active efforts will be based on the services provided. When the parents or Indian custodians refuse to participate the active effort will be based on the offer of services. Consultation with the Tribe is important in these circumstances.

### 0504.5.6 Order of Placement Preference

#### A. Foster Care

1. Before a court can order an out-of-home placement of an Indian Child; ICWA requires the child welfare agency to demonstrate by clear and convincing evidence that "continued custody by the parent or Indian custodian will result in serious emotional or physical damage to the child; pursuant to 25 U.S.C. ICWA §§ 1912.e. Furthermore, ICWA requires the determination be supported by an "expert witness;" pursuant to NRS 432B.451, testimony by a qualified expert witness is required in proceeding to place Indian Child in foster care.

This process shall be followed unless considered an emergency removal as outlined by NRS 432B.390. The child welfare worker should contact their agency legal counsel for consultation with the expert witness, if needed.

- In any case in which an Indian Child is removed from the physical custody of his or her parents or Indian custodian, placement shall comply with this section of the policy. (If there is reason to believe that the child is Indian, the order of placement preference applies; pursuant to 25 U.S.C. ICWA §§ 1915.b. Any child accepted for foster care or pre-adoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child.
2. In a foster care or pre-adoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement in the following order.
    - Order of Placement Preference for Indian Children in foster care:
      - a) A member of the child's extended family;
      - b) A foster home licensed, approved, or specified by the child's Tribe;
      - d) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; and,
      - e) An institution for children approved by or operated by an Indian organization, which has a program suitable to meet the child's needs.
  3. Tribal resolution may be presented for a different order of placement preference; personal preference is also considered and the court may honor a request from a parent regarding anonymity in application of preferences.

- If the Indian Child's Tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child.
- Where appropriate, the preference of the Indian Child or parent shall be considered: Provided that where a consenting parent evidences a desire for anonymity, the court or child welfare agency shall give weight to such desire in applying the preferences.
  - a) The child welfare worker shall document in UNITY case notes attempts made to honor the order of placement preference.
  - b) The Tribe's law or custom defines extended family members. If there is no law or custom, it includes any adult grandparent, aunt, uncle, sister, brother, sister-in-law, brother-in-law, niece, nephew, first or second cousin or stepparent.
  - c) Prior to placement in a relative's home, prospective guardian, or other person who is not a licensed foster parent, the child welfare worker shall follow the requirements of conducting and completing a criminal background check and complete a background check in the Nevada Child Abuse and Neglect System.
  - d) The child welfare worker must check with their supervisor whether the state and/or county have a Memorandum of Understanding (MOU) with the child's Tribe as a possible placement resource. Follow the established protocols for implementation of the MOU.

#### **0504.5.7 Termination of Parental Rights**

- A. The child welfare worker will summarize all active efforts to prevent the breakup of the Indian Child's family, and provide a list of all culturally competent services. The list shall include all active efforts to work closely with the Tribe to provide traditional and customary remedial and rehabilitative services to the Indian family, if identified by the family. A statement of why the services in the case plan failed should also be included.

The child welfare worker should consult with agency legal counsel.

#### **0504.5.8 Voluntary Relinquishments**

- A. If the child welfare agency receives a request for a relinquishment involving an Indian Child, consult your agency legal counsel. For purposes of this section, the domicile of an Indian Child must be determined in accordance with federal common law; pursuant to NRS 127.050. (If the Indian Child is a ward of the Tribal court, resides on a reservation or is domiciled on a reservation, the child welfare agency shall so notify the Indian Child's Tribe in writing.)

The child welfare worker should consult with agency legal counsel.

## B. Adoptive Placement

1. The Order of Placement Preference for Indian Children regarding adoptive placement of an Indian Child is that preference shall be given to a placement with one of the following:
  - a) A member of the child's extended family
  - b) Other members of the child's Tribe
  - c) Another Indian family

(If a different order of placement preference is ordered by the Tribe, the court or agency effecting the placement shall follow the order of preference established by the Tribe, so long as the placement is the least resistive setting appropriate to the particular needs of the child.)

### **0504.6 Attachments:**

#### **504.6.1 Appendices**

FPO 504A Assessing for Indian Heritage  
FPO 504B Ancestry Chart  
FPO 504C Determining Child Eligibility and Notice of Court Proceedings  
FPO 504D Federal Registry: Designated Agents for Service of Notice  
FPO 504E Active Efforts Matrix  
FPO 504F Nevada Indian Child Welfare Resources  
FPO 504G ICWA Flow Charts  
FPO 504H ICWA Check List  
FPO 504I Nevada Tribal Listing