



MTL # 0504 – 01062020  
01/06/2020

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FROM: Kathryn Roose, Deputy Administrator, Division of Child and Family Services

#### POLICY DISTRIBUTION

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

This policy is/was effective: 01/02/2020

- This policy is new. Please review the policy in its entirety
- This policy replaces the following policy(s): MTL # 0504-12132013 Policy Name: 504 ICWA
- 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): Please review all attachments.

#### 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://dcfs.nv.gov/Policies> Please check the table of contents on this page for the link to the chapter you are interested in.

**0504 Indian Child Welfare Act (ICWA)**

**Policy Approval Clearance Record**

<input checked="" type="checkbox"/> STATEWIDE POLICY <input type="checkbox"/> ADMINISTRATIVE POLICY <input type="checkbox"/> DCFS RURAL REGION POLICY	<input type="checkbox"/> NEW POLICY <input checked="" type="checkbox"/> MODIFIED POLICY <input type="checkbox"/> THIS POLICY SUPERSEDES:
DATE POLICY EFFECTIVE:	01/02/2020
ATTORNEY GENERAL REPRESENTATIVE REVIEW:	01/02/2020
DCFS DEPUTY ADMINISTRATOR APPROVAL	01/02/2020
DMG ORIGINAL APPROVAL	12/13/2013
DMG APPROVED REVISIONS	01/02/2020

**STATEMENT OF PURPOSE**

**Policy Statement and Purpose:** 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.

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), Clark County Department of Family Services (CCDFS) and Washoe County Human Services Agency (WCHSA) shall implement the ICWA policy which is designed to prevent the removal of Indian Children from their families and promote the child remaining in the Native community if such removals are necessary.

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 the state and county Child Welfare Agencies of Nevada.

**AUTHORITY**

**Federal:** [P.L. 95-608](#), [Indian Child Welfare Act of 1978](#), [25 U.S.C. Chapter 21 §§ 1901-1963](#)

**NRS:** [NRS 432B.067](#), [NRS 432B.068](#), [NRS 432B.390](#), [NRS 432B.397](#), [NRS 432B.425](#), [NRS 432B.451](#)

**NAC:** [NAC 127.042](#), [NAC127.043](#), [NAC 432B.263](#)

**DEFINITIONS**

**Active Efforts:** An action that is required of the state in caring for an Indian Child, mandated under the Indian Child Welfare Act (ICWA). Active efforts are defined as: 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 [25 C.F.R. § 23.2](#). Active efforts begin at the onset of the case and continue throughout the life of the case (see section Active Efforts).

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

**Child Welfare Worker:** Any Child Protection Services, Adoption and Interstate Compact on the Placement of Children staff of a Child Welfare Agency using this policy to address an ICWA situation.

**Domicile:** For a parent or Indian Child, the place at which a person has been physically present, and that the person regards as home; a person's true, fixed, principal and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere. For an Indian Child, the domicile of the Indian Child's parents or Indian custodian or guardian is the domicile of the Indian Child. In the case of an Indian Child whose Parents are not married to each other, the domicile of the Indian Child's custodial parent is the domicile of the Indian Child [25 C.F.R. § 23.2](#).

**Extended Family Member:** 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 eighteen (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 [25 U.S.C. § 1903\(2\)](#).

**Foster Care Placement:** 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:** 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 Child:** Any unmarried person under age eighteen (18) who is either a member or citizen of an Indian Tribe or is eligible for membership or citizenship in an Indian Tribe and is the biological child of a member/citizen of an Indian Tribe pursuant to [25 C.F.R. § 23.2](#); [25 U.S.C. ICWA §§ 1903](#).

**Indian Child's 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 of or eligible for membership in more than one tribe, the Indian Tribe described in [25 C.F.R. § 23.109](#) or the Indian Tribe with which the Indian Child has the most significant contacts [25 U.S.C. § 1903\(5\)](#).

**Indian Child Welfare Act (ICWA) of 1978:** A federal law that governs jurisdiction over the removal of (Native American) Indian Children from their families. ICWA set 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 Custodian:** 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 [25 C.F.R. § 23.2](#).

**Indian Tribe:** Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of the status as Indians 25 U.S.C. section 1903(8).

**Notice:** 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 or certified 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 [25 C.F.R. § 23.111\(c\)](#).  
*Note: Failure to provide such notice can cause a jurisdictional defect that may result in any such proceeding to be overturned.*

**Parent:** 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:** The placement of an Indian Child in a relative home, fictive kin home, or foster home in contemplation of a prospective adoption.

**Qualified Expert Witness:** A person who will testify that the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child at both the foster care hearing and termination of parental rights and should be qualified to testify as to the prevailing social and cultural standards of the Indian Child's Tribe. A person may be designated by the child's Tribe. The court or any party may request the assistance of a child's Tribe in locating a person qualified to serve as expert witnesses. The witness cannot be the social worker assigned to the case [25 U.S.C. § 1912 \(e\) & \(f\)](#); [25 C.F.R. §23.122\(a\)](#).

**Standard of Proof:** Hearings for foster care placements require clear and convincing evidence. Hearings for termination of parental rights requires evidence beyond a reasonable doubt. There must be a causal relationship between the conditions in the home and the likelihood of serious emotional and physical damage to the child [25 U.S.C. § 23.121](#).

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

**Tribal Court:** A court with jurisdiction over child in 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:** Tribal intervention in a child custody case occurs when a Tribe acts on its right to become a party to child custody proceedings.

## **STANDARDS/PROCEDURES**

**Application:** In order for ICWA to apply the first requirement is the presence of an Indian Child as defined by [25 C.F.R § 23.2](#):

1. If the worker or the court has reason to know 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's legal counsel.
2. The child custody proceedings that ICWA applies to are foster care placement, termination of parental rights, pre-adoptive placement and/or adoptive placement. ICWA does not apply to divorce proceedings.

### **Inquiry:**

1. 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 the time, Ongoing inquiries need to be made of both parents as the case progresses and as more information becomes available.
2. Once a report with a disposition of investigation is created, Child Welfare workers will follow the Nevada Initial Assessment (NIA) policy protocols. If the Indian Child is domiciled on the reservation, colony or community or the Indian Child is a ward of Tribal court, the Child Welfare worker should notify their Agency's 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.
  - a. 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. Inquiries on Indian heritage shall be made at the following points of the case, but not limited to:

- i. 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.
  - b. 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 should inquire about "Native" ancestry as well as "Indian" ancestry. Fill-out and complete FPO 0504A Assessing for Indian Heritage form and place in case file.
  - c. The Child Welfare worker shall fill out FPO 0504B Ancestry Chart with the parents, caregivers, and/or relatives when Indian heritage is identified.
  - d. The Child Welfare worker shall complete UNITY windows American Indian Detail, American Indian Detail Reservation, and American Indian Detail Tribal Information.
    - i. The name and location of the Tribe to which the child belongs;
    - ii. The enrollment number of the child, if the Tribe to which the child belongs has assigned such a number;
    - iii. Whether the child has resided or been domiciled on a reservation or has been a ward of a Tribal court;
    - iv. 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; and
    - v. If the child is an Alaskan Native, the name of the child's village or regional corporation.
  - e. The Child Welfare worker shall record in writing the information provided by a parent(s), legal guardian or relative pursuant to this section.
  - f. 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.
3. Find the address and listing of the Tribe on the Federal Register Designated Tribal Agents for ICWA Notice, see [www.BIA.gov](http://www.BIA.gov) for current information. The list of Designated Agents for ICWA Notice includes the Tribes, their addresses and Tribal officers for receipt of notice.
- a. The Child Welfare Agency must obtain verification of a child's Indian status by requesting verification from an Indian Tribe;
  - b. Fax or email the Determining Tribal Eligibility and Notice of Court Proceedings inquiry form (see FPO 0504C) to inquire and request confirmation of Tribal membership or eligibility of membership to the Tribe(s);
  - c. Send a copy to the Tribal social worker and/or the Tribal ICWA Director;
  - d. Contact the Tribal Designated Agent via phone for service and document in UNITY case notes all attempts to contact and the response received;
  - e. Verification can be in the form of an affidavit, declaration, or other certified statement from the Tribe or Bureau of Indian Affairs;
  - f. Document the Tribal affiliation confirmation in UNITY window American Indian Detail; with the name of the Tribe, and the date received.

**\*\*Note, this does NOT replace statutory Notice requirements (see next section).**

4. 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 Detailscreens.

## Notice

1. 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](#). 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.

2. 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 be notified.
3. Best practice is to give oral and written notice by registered or certified mail for the protective custody hearing and follow NRS432B.470. The Agency must give proper notice outlined in section 4 and 5 for the petition hearing or the first hearing in which the child is identified as an Indian child. Best practice and most courts require notice of all subsequent hearings to all potential tribes until the tribe confirms the child is not an Indian child.
4. All involuntary child custody proceedings where the Agency knows or has reason to know that an Indian Child is involved require proper notice to the parent, including any potential father, any Indian custodian and all tribes in which the child may have membership (or if the Tribe is unknown, to the Bureau of Indian Affairs) by registered or certified mail with return receipt at least ten (10) days prior to a hearing 25 U.S.C. section 1912(a); 25 C.F.R section 23.111(b)(2)&(3); C.F.R. 23.112(b)(1).
5. Proper Notice Requirements: Notice must be in clear and understandable language and include the following information:
  - i. The child's name, birthdate, and birthplace;
  - ii. All names known (including maiden, married, and former names or aliases) of the parents, the parent's birthdates and birth places, and Tribal enrollment numbers if known;
  - iii. If known, the names, birthdates, birthplaces, and Tribal enrollments information of other direct lineal ancestors of the child, such as grandparents;
  - iv. The name of each Indian Tribe in which the child is a member (or may be eligible for membership if a biological parent is a member);
  - v. A copy of the petition, complaint, or other document by which the child custody proceeding was initiated, and if a hearing has been scheduled, information on the date, time, and location of the hearing;
  - vi. Notices must contain statements that set forth:
    1. The name of the petitioner and the name and address of petitioner's attorney;
    2. The right of any parent or Indian custodian of the child, if not already a part to the child-custody proceeding, to intervene in the proceedings;
    3. The Indian Tribe's right to intervene at any time in a State court proceeding for the foster care placement of or termination of parental rights to an Indian child;
    4. That, if the child's parent or Indian custodian is unable to afford counsel based on a determination of indigence by the court, the parent or Indian custodian has the right to court appointed counsel;
    5. The right to be granted, upon request, up to twenty (20) additional days to prepare for the child custody proceedings;
    6. The right of the parent or Indian custodian and the Indian child's Tribe to petition the court for transfer of the foster care placement or termination of parental rights proceeding to Tribal court as provided by [25 U.S.C. 1911](#) and [§ 23.115](#);
    7. The mailing addresses and telephone numbers of the court and information related to all parties to the child custody proceeding and individuals notified under this section;
    8. The potential legal consequences of the child custody proceedings on the future parental and custodial rights of the parent or Indian custodian; and
    9. That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA [25 C.F.R. § 23.111\(d\)](#).

- b. The Child Welfare Worker shall find the address and listing of the Tribe(s) on the Federal Register ICWA located at [www.BIA.gov](http://www.BIA.gov).
    - i. 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;
    - ii. Send by registered or certified mail with return receipt requested; pursuant to [25 C.F.R. § 23.111\(c\)](#)
  - c. **Notice must be sent** to the parents or any Indian custodian even if a parent has been personally served. Notice to the parent(s) and Indian custodian is to be sent by registered or certified mail with return receipt requested of the pending proceedings and the Child Welfare worker shall make copies and place in the case file.
    - i. Actual Notice. Best practice to also give actual notice if possible. Actual notice includes phone contact or direct, and in person, service to the parent(s), Indian custodian and/or Tribe. The child welfare worker shall document the time and date of service in the UNITY Custody Notice window. *Even if actual notice is performed, notice by registered or certified mail with return receipt is still required.*
    - ii. Copies of the Notice must be sent to the Phoenix Regional Director (23.11(10):  
Phoenix Regional Director  
Bureau of Indian Affairs  
2600 North Central Ave.  
Phoenix, AZ 85004
  - d. Proof of notices sent, including copies of notices, responses received, or any other proof of notice, shall be filed with the court prior to the hearing and will include the registered or certified mail receipt. Any response received from any Tribe or any parent should be filed with the court. The Child Welfare worker shall record the Tribal notification date, court address, and date court notice was sent in UNITY Custody Notice window.
6. Upon entry of all information into UNITY windows; the Child Welfare worker may generate notice from UNITY Custody Notice window by printing the notice and sending by registered or certified mail with return receipt requested. **See UNITY windows instruction under Documentation / Complete Navigational Path.**
- a. UNITY Custody Notice window generates proper notice provided that the Child Welfare worker has completed all UNITY windows that capture Tribal information, including American Indian Detail, American Indian Detail Reservation, and Tribal Information. UNITY stores Tribal notification dates, court address, and the date the court notice was sent. The Child Welfare worker shall mail the notice to the Tribe, parents, and Indian custodians by registered or certified mail with return receipt requested.
  - b. The Child Welfare worker shall continue sending notices for every child custody proceeding throughout the life of the case.
    - i. Notice continues if the Tribes does not respond;
    - ii. Notice continues upon verification of Tribal membership or eligibility by the Tribe; and
    - iii. 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)**

1. 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. § 23.111\(e\)](#) Regulations.
  - a. 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  
2600 North Central Ave.  
Phoenix, AZ 85004

- b. Send to the Area Director, by registered or certified mail with return receipt requested, a copy of the inquiry letter, notice and petition.

**Intervention:**

1. 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.
  - a. Intervention means that the Tribe becomes a party to the proceedings;
  - b. The Tribe can use discretion as to their level of involvement ranging from case monitoring to full participation in case planning.;
  - c. When a Tribe intervenes, it is entitled to receive service of all motions and legal documents from that point forward.

**Transfer to Tribal Court:**

1. The Tribe or child’s parents can, at any point in the case, request transfer of jurisdiction to Tribal court. If there is a petition to transfer jurisdiction the case worker should consult the Agency’s legal counsel for transfer process.
2. Upon request from the Tribe or either of the parents, the court may transfer the case, unless:
  - a. Either parent objects to the transfer (25 U.S.C. ICWA §§ 1911.b; 23.117)
  - b. The Tribal Court declines the transfer
  - c. Good cause exists for denying the transfer
3. State court jurisdiction should be transferred upon acceptance by the Tribal Court, by way of a Tribal Court order, to avoid a lapse in jurisdiction.
4. The Tribe has its own internal judicial process that is followed for transferring jurisdiction.

**Active Efforts:**

1. 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” 25 U.S.C. ICWA §§ 1912.d.
  - a. 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, on a case-by-case basis.
  - b. The Rules and Regulations specify that to the maximum extent possible, the active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and the way of life of the child’s Tribe and should be conducted in partnership with the child and the child’s parents, extended family members and Tribe.
  - c. 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.
  - d. 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, an assessment of present danger, impending danger, safety threats, caregiver protective capacities and the need for safety plan services. Active efforts must continue throughout the duration of a child protection case until reunification, guardianship, relinquishment, or termination of parental rights has been made regarding the child.
  - e. Active efforts are to be tailored to the facts and circumstances of the case.
  - f. Specific Examples: The Rules and Regulation provided eleven (11) examples of active efforts. This list is not exhaustive, see 25 C.F.R Section 23.2:



- I. Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
  - II. Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
  - III. Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;
  - IV. Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and Indian child's parents;
  - V. 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;
  - VI. Taking steps to keep siblings together whenever possible;
  - VII. Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
  - VIII. Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents, or when appropriate, the child's family, in utilizing and accessing those resources;
  - IX. Monitoring progress and participation in services;
  - X. Considering alternative way to address the needs of the Indian child's parents, and where appropriate, the family, if the optimum services do not exist or are not available; and
  - XI. Providing post-reunification services and monitoring ([25 C.F.R. § 23.2](#)).
- g. 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. 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.
- h. 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.
- I. Use respectful inquiries by asking parents: Are there any relatives that should be involved?
  - II. Identify family strengths, by asking family members: What are your traditions and customs of your Tribe?
  - III. Ask the family about their Tribal way of life: Do you go to Tribal functions? Are you still connected to the Tribe?
  - IV. It is through these respectful inquiries that communication, cooperation, and collaboration can lead to the formation of a successful case plan.
  - V. Document in UNITY case notes.
- i. Active efforts are shown through the worker's attempts to assist in both arranging for the best fitting culturally competent services and helping families engage in culturally competent services that are unique to their needs. Case plans should be developed in conjunction with the Tribe and address culturally appropriate services they have available for their members. Case plans shall be written within forty-five (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. 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. Examples of culturally appropriate services:

- I. Indian Health Services
  - II. Wraparound in Nevada
  - III. Intensive Family Services
  - IV. Invite the Tribal Social Worker to participate in family and child meetings
  - V. Transport the parent(s) to their appointments
  - VI. Help parent(s) fill out applications
  - VII. Connect parent(s) with Native American service providers
- j. 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 tasks that directly affect the reunification are not completed by the family member(s), the Child Welfare worker will actively assist and support the family in completing the tasks and document all efforts to do so.
- k. To ensure the child's health and safety 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 the Tribe's level of involvement and intervention. Although family decision making may look different from county to county, common elements may include:
- I. 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;
  - II. 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
  - III. 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;
  - IV. 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.
- l. Active efforts findings can be distinguished from the reasonable efforts' findings 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 makes a finding on the allegation of the abuse and/or 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.
2. It is extremely important to document ALL active efforts made throughout the case. Ensure that every effort you make is documented in a UNITY case note and specifically in detail in your court reports. It is a good idea to cite the examples from 25 C.F.R Section 23.2 whenever possible.

## Order of Placement Preference

**Note: The Agency must follow the order of placement preference or state good cause to deviate from the placement preference on the record and obtain an order from the court for good cause to depart from the placement preference.**

1. Order of Placement Preference for Foster Care
  - a. In any case, which an Indian Child is removed from the physical custody of his or her parents or Indian custodian, placement must follow the placement preference. 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; pursuant to 25 U.S.C. ICWA §§ 1915.b.
    - I. A member of the child's extended family;
    - II. A foster home licensed, approved, or specified by the child's Tribe;
    - III. An Indian foster home licensed or approved by an authorized non-Indian licensing authority;
    - IV. An institution for children approved by or operated by an Indian organization, which has a program suitable to meet the child's needs.
2. Order of Placement Preference for Adoptive Placement
  - a. In an adoptive 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:
    - I. A member of the child's extended family;
    - II. Other members of the child's Tribe;
    - III. Another Indian family;
    - IV. Must consider the placement preference of the child or the child's parent.
3. Other considerations in placement preference:
  - a. The placement must be least-restrictive setting, must allow for child's special needs (if any) to be met; and must be in reasonable proximity to child's home, extended family or siblings.
  - b. **Tribal resolution may be presented for a different order of placement preference.** If the Indian child's Tribe establishes 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;
  - c. Where appropriate, the preference of the Indian child or parent shall be considered, provided that a consenting parent evidences a desire for anonymity, the Court or Child Welfare Agency shall give weight to such desire in applying the preferences;
  - d. The Child Welfare worker shall document in UNITY case notes attempts made to honor the order of placement preference;
  - e. 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;
  - f. 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;
  - g. 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.
4. Good Cause to the Contrary. State on the record and obtain an order. The placement preferences must be followed absent good cause to the contrary.
  - a. Any good cause must be stated orally on the record or provided in writing to the court and the parties;
  - b. The agency bears the burden to show good cause to the contrary by clear and convincing evidence;

- c. Order: The courts determination of good cause must be made on the record or in a written order;
- d. Good cause should include the following considerations:
  - I. The request of either parent, if they attest that they have reviewed the placement options;
  - II. The request of the child;
  - III. The presence of a sibling attachment;
  - IV. The extraordinary physical, mental, or emotional needs of the child, such as specialized treatment services that may be unavailable in the communities where families who meet the placement preference live; or
  - V. The unavailability of a suitable placement that meets the placement preference after the Court determines that a diligent search to find a suitable placement was conducted.
- e. A placement may not depart from the placement preference based on the socioeconomic status of any placement and may not depart from the preference based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

### Qualified Expert Witness

1. Foster Care Placement
  - a. Foster care placement can only be made if there is clear and convincing evidence that "continued custody by the parent or Indian custodian will result in serious emotional or physical damage to the child."
  - b. The testimony of a qualified expert witness is required to show serious emotional or physical damage to the child.
  - c. This process shall be followed unless considered an emergency removal as outlined by NRS 432B.390. The Child Welfare worker should contact their Agency's legal counsel for consultation with the expert witness, if needed.
2. Termination of Parental Rights
  - a. In order to terminate the parental rights of an Indian Child, you must show by evidence beyond a reasonable doubt that "continued custody by the parent or Indian custodian will result in serious emotional or physical damage to the child."
  - b. The testimony of a qualified expert witness is required to show serious emotional or physical damage to the child.

### Voluntary Consent (See 25 USC 1913 AND 23.125)

1. Consult with your Agency's Legal Counsel.
2. Must be executed in writing and before a judge of a court of competent jurisdiction (i.e. done in open court).
3. Accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent.
4. The court shall also certify that the parent fully understood the explanation in English or that it was interpreted into a language that the parent understood.
5. Consent given prior to, or within ten (10) days after, birth of the Indian child is NOT valid.
6. Consent can be withdrawn at any time prior to the final decree of termination or adoption.
7. Consent **must** contain any conditions.
8. Consent **should** contain following: the name and birthdate of the Indian child; the name of the Indian child's Tribe; the Tribal enrollment number for the parent and for the Indian child, where known, or some other indication of the child's membership in the Tribe; the name, address, and other identifying information of the consenting parent or Indian custodian; the name and address of the person or entity, if any, who arranged the placement; and the name and address of the prospective foster parents, if known at the time.

**Adoption Notice**

1. When there is a final decree of adoption, the Agency must ensure notice to the BIA.
2. The Notice must include: name and birthdate of child, tribal affiliation, name of child after adoption; name and addresses of biological parents; name and addresses of adoptive parents; contact information on agency having files/information relating to adoption; any affidavit signed by parents to keep contact information confidential; any information relating to tribal membership or eligibility of child.
3. Send the Notice along with the Final decree of adoption to BIA: Chief, Division of Human Services, 1849 C Street NW, Mail Stop 3645 MIB, Washington, DC 20240.
4. Mark the envelope “CONFIDENTIAL”.
5. Regulation 23.141 requires the State must maintain a record every foster care, pre-adoptive and adoptive placement of an ICWA child.

**Documentation:**

**UNITY Documentation (electronic)**

Applicable UNITY Screen	Data Required
<ul style="list-style-type: none"> <li>• <b>UNITY Custody Notice window</b></li> <li>• <b>American Indian Detail</b></li> <li>• <b>American Indian Detail Reservation</b></li> <li>• <b>Tribal Information</b></li> </ul>	<ul style="list-style-type: none"> <li>• Name and location of the Tribe to which the child <u>belongs</u>:</li> <li>• The enrollment number of the child,</li> <li>• Whether the child has resided or been domiciled on a reservation or has been a ward of a Tribal <u>court</u>:</li> <li>• The name, and the enrollment number of each Indian relative of the child,</li> <li>• If the child is an Alaskan Native, the name of the child’s village or regional corporation.</li> </ul> <p><i>Complete Navigational Path: UNITY Header &gt; Intake &gt; Person Profile &gt; Search &gt; (Enter search criteria and click Find to locate a person in the system) &gt; (Select one of the Persons Returned and click Return Selected) &gt; Click the blue "American Indian" hyperlink at the bottom of the page</i></p>

**JURISDICTIONAL ACTION**

**Development of Internal Policies:** Each jurisdiction shall develop their own protocol and maintain a record for implementing this policy and ensuring compliance.

**STATE RESPONSIBILITIES**

Compliance with this policy will be monitored via the State Agency’s quality assurance process.

**POLICY CROSS REFERENCE**

**Policies:** N/A

**History and Updates:** This policy was effective 10/18/2013, with revisions effective 01/02/2020

**ATTACHMENTS**

- FPO 0504A – Assessing for Indian Heritage
- FPO 0504B – Ancestry Chart
- FPO 0504C – Determining Tribal Eligibility and Notice of Court Proceedings
- FPO 0504D – Nevada Tribes, ITCN and Urban Organizations