

5101:2-53-01

Definitions related to the Indian Child Welfare Act (ICWA).

(A) "Active efforts" means ~~prompt and diligent efforts to~~ 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 involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts shall be tailored to the facts and circumstances of the case and may include, for example:

- ~~(1) Determine the child's tribe(s) for which he or she may qualify for membership.~~
- ~~(2) Contact the child's tribe(s) when known.~~
- ~~(3) Provide remedial services and rehabilitative programs designed to prevent the breakup of the family.~~
- ~~(4) Coordinate with the child's tribe or any Indian organization to assist the Indian parent or Indian custodian with services needed to avoid the need for placement, or in the event placement becomes necessary, to serve as a placement for the child.~~
- ~~(5) Make arrangements to ensure visitation with the extended family, or if there is not family in the area, with other tribal members to support the child's cultural connections.~~
- ~~(6) Coordinate with the child's tribe and family to identify significant cultural and important familial events and arrange for the child's attendance.~~
- (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
- (2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
- (3) 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;

- (4) 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 to provide family structure and support for the Indian child and the Indian child's parents;
 - (5) 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;
 - (6) Taking steps to keep siblings together whenever possible;
 - (7) 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;
 - (8) 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;
 - (9) Monitoring progress and participation in services;
 - (10) Considering alternative ways 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
 - (11) Providing post-reunification services and monitoring.
- (B) "Agency" means a nonprofit, for-profit, or governmental organization and its employees, agents, or officials that performs, or provides services to biological parents, foster parents, or adoptive parents to assist in the administrative and social work necessary for foster, preadoptive, or adoptive placements.
- ~~(B) "Child custody proceedings" include foster care placements, termination of parental rights, preadoptive placements, and adoptive placements. A placement that meets the definition of foster care placement and results from an act that would not be deemed a crime if committed by an adult such as a status offense, is a child custody proceeding under the Indian Child Welfare Act (ICWA) as reauthorized by the "Child and Family Services Improvement Act" of 2006. A child custody placement pursuant to a divorce where someone other than one of the parents will obtain custody of the child is also a child custody proceeding under ICWA.~~
- (C) "Child custody proceeding" means and includes the following:

- (1) Any action, other than an emergency proceeding, that may culminate in one of the following outcomes:
- (a) Foster care placement, which 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 or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
 - (b) Termination of parental rights, which is any action resulting in the termination of the parent-child relationship;
 - (c) Preadoptive placement, which is the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; or
 - (d) Adoptive placement, which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.
- (2) A status offense proceeding that results in a child being placed into foster care or another out-of-home placement.
- (D) "Continued custody" means physical custody, legal custody or both, under any applicable tribal law, tribal custom or state law, that a parent or Indian custodian already has or had at any point in the past.
- (E) "Custody" means physical custody, legal custody or both, under any applicable tribal law, tribal custom or state law. A party may demonstrate the existence of custody by looking to tribal law or tribal custom or state law.
- (F) "Domicile" means:
- (1) For a parent or Indian custodian, 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.
 - (2) For an Indian child, the domicile of the Indian child's parents or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's custodial parent.
- (G) "Emergency proceeding" means and includes any court action that involves an emergency removal or emergency placement of an Indian child.

~~(E)~~(H) "Extended family member" is defined by the law or custom of the Indian child's tribe; or, in the absence of such law or custom, is a person who has reached ~~the~~ age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent.

~~(D)~~ "Foster care placement" ~~is any action where an Indian child is removed from his or her parents or Indian custodian for temporary placement in a home or institution, including guardianship and conservatorship, and where the parent or custodian cannot have the child returned upon demand but where parental rights have not been terminated.~~

~~(E)~~(I) "Indian" ~~is~~ means any person who is a member of an Indian tribe, or who is an Alaskan native who is a member of a regional corporation as defined by the Alaska Native Claims Settlement Act, 43 U.S.C. ~~See~~ 1606 (2008).

~~(F)~~(J) "Indian child" ~~is~~ means any unmarried person under age eighteen and ~~is~~ either:

- (1) Is ~~A~~ a member or citizen of an Indian tribe; or
- (2) Is ~~Eligible~~ eligible for tribal membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe, or an Alaskan native who is a member of a regional corporation as defined by the Alaska Native ~~Claim~~ Claims Settlement Act.

~~(G)~~(K) "Indian child's tribe" ~~is 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 with which the Indian child has the more significant contacts.~~ means:

- (1) The Indian tribe in which an Indian child is a member or eligible for membership;
or
- (2) 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 (2016).

~~(H)~~(L) "Indian custodian" ~~is~~ means any Indian ~~person~~ who has legal custody of an Indian child under ~~either~~ applicable tribal law or custom or under ~~state~~ applicable state law, or to whom temporary physical care, custody, or control has been transferred by the parent of the child.

~~(M)~~ "Indian foster home" means a foster home where one or more of the licensed or approved foster parents is an "Indian" as defined in 25 U.S.C. 1903(3) (1978).

~~(N)~~ "Indian organization" ~~is means~~ any group, association, partnership, corporation, or other legal entity owned or controlled by Indians or a tribe, or a majority of whose members are ~~Indian~~ Indians.

~~(O)~~ "Indian tribe" ~~is means~~ any ~~tribe~~ Indian tribe, band, nation, or other organized group or community of Indians federally recognized by the secretary of the interior as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska native village as defined in section 3(c) by of the Alaska Native Claims Settlement Act, 43 U.S.C. ~~See: 1602(c)~~ (2000).

(P) "Involuntary proceeding" means a child custody proceeding in which the parent does not consent of his or her free will to the foster care, preadoptive, or adoptive placement or termination of parental rights or in which the parent consents to the foster care, preadoptive, or adoptive placement under threat of removal of the child by a state court or agency.

~~(K)~~ (Q) "Parent or parents" means the any biological parent or parents of an Indian child, or an any Indian person who has lawfully adopted an Indian child, either under state law or including adoptions under tribal law or custom. This includes the non-Indian biological parent but it ~~It~~ does not include a putative an unwed biological father whose where ~~where~~ paternity has not been acknowledged or established.

~~(L) "Qualified expert witness" means an expert on the child's tribe. In addition, the bureau of Indian affairs has promulgated "Guidelines for State Courts" which interpret the ICWA. The following characteristics are set forth at 44 Federal Register 67,593 (1979) as those most likely to qualify a witness as an expert under ICWA:~~

~~(1) A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices.~~

~~(2) A lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe.~~

~~(3) A professional person having substantial education and experience in the area of his or her specialty.~~

(R) "Qualified expert witness" means a person who is qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe. The agency may request the assistance of the Indian child's tribe or the bureau of Indian affairs

(BIA) office serving the Indian child's tribe in locating persons qualified to serve as expert witnesses. The social worker regularly assigned to the Indian child shall not serve as a qualified expert witness in child custody proceedings concerning the child.

~~(M)~~(S) "Reservation" means Indian country as defined in ~~section 1151 of Title 18, U.S.C.~~18 U.S.C. 1151 (1949) and any lands, not covered under that section, title to which is held by ~~which are either held by~~ the United States in trust for the benefit of any Indian tribe or individual; or held by any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the U.S. against alienation.

(T) "Secretary" means the secretary of the interior or the secretary's authorized representative acting under delegated authority.

~~(N)~~(U) "State court of competent jurisdiction" means an Ohio juvenile court.

~~(O)~~ "Secretary" means U.S. secretary of the interior.

(V) "Status offenses" mean offenses that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person's status as a minor.

~~(P)~~(W) "Tribal court" ~~is~~ means a court ~~having with~~ jurisdiction over child custody proceedings. ~~It may be an Indian court of offenses and which is either a court of Indian offenses, a court established and operated under tribal law the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.~~

(X) "Tribal government" means the federally recognized governing body of an Indian tribe.

~~(Q) "Tribal intervention" means a tribe may act on its right to participate in a child custody proceeding. This intervention can be wide in its interpretation; the tribe may request to transfer the case to tribal court (a transfer of jurisdiction) or the tribe may choose to only monitor the case through court records. Transfer of jurisdiction can be requested by either the parent or the tribe. A tribe may intervene at any point in an Indian child custody proceeding.~~

(Y) "Upon demand" means that the parent or Indian custodian can regain custody simply upon verbal request, without any formalities or contingencies.

(Z) "Voluntary proceeding" means a child custody proceeding that is not an involuntary proceeding, such as a proceeding for foster care, preadoptive, or adoptive placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a state agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

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