

5101:2-53-01

Definitions related to the Indian Child Welfare Act.

(A) "Active efforts" means prompt and diligent efforts to:

- (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.

(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) "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, 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) "Indian" is any person who is a member of an Indian tribe or an Alaskan native who is a member of a regional corporation as defined by the Alaska Native Claims Settlement Act 43 U.S.C. Sec. 1606 (1971).

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

(1) A member of an Indian tribe.

(2) Eligible for tribal membership in an Indian tribe and is the biological child of a member of an Indian tribe, or an Alaskan native who is a member of a regional corporation as defined by the Alaska Native Claim Settlement Act.

(G) "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.

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

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

(J) "Indian tribe" is any tribe, band, nation, or other organized group or community of Indians recognized by the secretary of the interior as eligible for services provided to Indians because of their status as Indians, including any Alaska native village as defined by the Alaska Native Claims Settlement Act, 43 U.S.C. Sec. 1602, as amended.

(K) "Parent" means the biological parent or parents of an Indian child or an Indian person who has adopted an Indian child either under state law or tribal law or custom. This includes the non-Indian biological parent but it does not include a putative father whose paternity has not been 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.

(M) "Reservation" means Indian country as defined in section 1151 of Title 18, U.S.C. (2006), and any lands 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 subject to a restriction by the U.S. against alienation.

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

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

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

(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.

Replaces: 5101:2-42-49
Effective: 04/20/2008
R.C. 119.032 review dates: 02/01/2013

CERTIFIED ELECTRONICALLY

Certification

03/10/2008

Date

Promulgated Under: 119.03
Statutory Authority: 5103.03, 5153.16
Rule Amplifies: 5103.03, 5153.16
Prior Effective Dates: 3/20/87, 2/1/03