

5101:2-53-02**General provisions of the Indian child welfare act (ICWA).**

(A) The public children services agency (PCSA) or the private child placing agency (PCPA) shall follow all of the Indian child welfare rules and guidelines as outlined by the Indian Child Welfare Act (ICWA)(1978) as reauthorized by the Child and Family Services Improvement Act of 2006. Failure to identify Indian children can nullify court proceedings that have not been conducted in accordance with ICWA.

(B) The requirements of ICWA apply when a child is:

(1) Determined to be an Indian child in accordance with rule 2-53-03 of the Administrative Code; and

(2) The subject of:

(a) A child custody proceeding, including:

(i) An involuntary proceeding;

(ii) A voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the child upon demand;

(iii) A proceeding involving status offenses if any part of the proceeding results in the need for out-of-home placement of the child, including a foster care, preadoptive, or adoptive placement, or termination of parental rights.

(b) An emergency proceeding.

(C) When determining whether the requirements of ICWA apply to a proceeding identified in paragraph (B) of this rule, the agency shall not consider factors such as the participation of the parents or the Indian child in tribal cultural, social, religious, or political activities, the relationship between the Indian child and his or her parents, whether the parent ever had custody of the child, or the Indian child's blood quantum.

(D) If the requirements of ICWA apply at the commencement of a proceeding, they do not cease to apply simply because the child reaches eighteen years of age during the pendency of the proceeding.

(E) ICWA requirements do not apply to:

(1) A tribal court proceeding;

(2) A proceeding regarding a criminal act that is not a status offense;

(3) An award of custody of the Indian child to one of the parents including, but not limited to, an award in a divorce proceeding; or

(4) A voluntary placement that either parent, or both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a state agency, chosen for the Indian child and that does not operate to prohibit the child's parent or Indian custodian from regaining custody of the child upon demand.

(F) An agency has reason to know that a child is an Indian child if:

(1) Any individual or agency relevant to the case informs the agency that the child is an Indian child or has discovered information indicating that the child is an Indian child;

(2) The child gives the agency reason to know he or she is an Indian child;

(3) The agency is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska native village;

(4) The agency is informed that the child is or has been a ward of a tribal court; or

(5) The agency is informed that either parent or the child possesses an identification card indicating membership in an Indian tribe.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	5153.166, 5103.03
Rule Amplifies:	5103.03, 5153.16