

5101:2-53-03 **Determination of Indian status, tribal eligibility and membership.**

- (A) For each referral the agency screens in, the public children services agency (PCSA) or private child placing agency (PCPA) shall ask case participants whether the participant knows or has reason to know pursuant to rule 5101:2-53-02 of the Administrative Code that the child is an Indian child as defined in rule 5101:2-53-01 of the Administrative Code. The agency shall make this inquiry upon the initial face to face contact with the child or the child's parent, guardian or custodian.
- (B) If the child's parents, guardian or custodian are unavailable or unable to provide information regarding whether the child may be an Indian child, the agency shall consider the following and document in the case record:
- (1) A consultation with relatives or collaterals providing information which suggests the parent may or may not be a member of an Indian tribe or the child may or may not be a member of or eligible for membership in an Indian tribe.
 - (2) An examination of any other information bearing on the determination of the child's status of membership or eligibility for membership in an Indian tribe, such as a review of all documentation in the file, including contact with previous caseworkers and communication from other sources, (e.g., Indian tribes and Indian organizations).
- (C) If there is reason to know that the child is an Indian child, but the agency does not have sufficient evidence to determine that the child is or is not an Indian child, the agency shall:
- (1) Use due diligence to identify and work with all of the tribes of which there is reason to know that the child may be a member or eligible for membership and to verify that the child is a member or a biological parent is a member and the child is eligible for membership; and
 - (2) Treat the child as an Indian child, unless and until it is determined that the child does not meet the definition of an Indian child.
- (D) If the agency is initiating court action for removal or custody of the child and information is obtained that suggests a child may be an Indian child but the tribe cannot be identified, the agency shall seek assistance in identifying and locating the tribe by sending the notice described in rule 5101:2-53-04 of the Administrative Code to the bureau of Indian affairs (BIA) as described in paragraph (E) of rule 5101:2-53-04 of the Administrative Code.

- (E) If the agency is initiating court action for removal or custody of the child and information is obtained that suggests a child is an Indian child and a tribe or possible tribes have been identified, the agency shall do all of the following:
- (1) Contact the tribe or possible tribes within fourteen calendar days of the date the information was obtained; and
 - (2) Submit a request to each possible tribe for written verification from the tribe regarding the child's tribal membership or eligibility for tribal membership. The agency's inquiry to the tribe shall be sent by registered or certified mail with "return receipt requested". A list of federally recognized tribes which includes a contact person and address for each tribe is available on the BIA website at www.bia.gov. If the tribe does not respond to written inquiries, the caseworker shall seek assistance in contacting the Indian tribe from the BIA regional office in Minnesota or the BIA's central office in Washington D.C.
 - (3) Bring to the juvenile court's attention, if applicable, any documentation submitted by the tribe and the agency's efforts to verify whether the child is or is not an Indian child.
 - (4) Include the following information with the petition filed in such proceeding:
 - (a) The name, age, tribal affiliation(s) and last known address of the Indian child.
 - (b) The name and address of the child's parent(s) and/or Indian custodian(s), if any, and tribe. The agency shall provide a detailed explanation of active efforts made to locate the parents, Indian custodian and/or the Indian child's tribe.
 - (c) A detailed account of the circumstances which led the agency to conclude that the child would suffer imminent physical damage or harm.
 - (d) A specific plan of action the agency is following, including services provided, to restore the child to his or her parent(s) or Indian custodian, or to transfer the child to the jurisdiction of the appropriate Indian tribe.
- (F) If the juvenile court takes action to verify whether the child is or is not an Indian child, the agency shall provide the court with assistance if so requested.
- (G) The agency shall assist the family in filing required documents if the family wishes to submit an application for the child to become a member of his or her tribe.

- (H) If the Indian child is a member or eligible for membership in only one tribe, that tribe shall be designated as the Indian child's tribe.
- (I) If the child meets the definition of "Indian child" through more than one tribe, deference should be given to the tribe in which the Indian child is already a member, unless otherwise agreed to by the tribes.
- (J) If a child meets the definition of "Indian child" through more than one tribe because the child is a member in more than one tribe or the child is not a member of but is eligible for membership in more than one tribe, the court must provide the opportunity in any involuntary child custody proceeding for the tribes to determine which should be designated as the Indian child's tribe.
- (1) If the tribes are able to reach an agreement, the agreed-upon tribe shall be designated as the Indian child's tribe.
 - (2) If the tribes are unable to reach an agreement, the court will designate, for the purposes of the Indian Child Welfare Act (ICWA), the Indian tribe with which the Indian child has the more significant contacts as the Indian child's tribe, taking into consideration the following:
 - (a) Preference of the parents for membership of the child;
 - (b) Length of past domicile or residence on or near the reservation of each tribe;
 - (c) Tribal membership of the child's custodial parent or Indian custodian;
 - (d) Interest asserted by each tribe in the child custody proceeding;
 - (e) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes; and
 - (f) Self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify.
 - (3) A determination of the Indian child's tribe for the purposes of ICWA does not constitute a determination for any other purpose.
- (K) A child who is determined by the tribe not to be a member nor eligible for membership is not subject to the requirements of the ICWA. Once tribal ineligibility has been determined, tribal status shall be clearly documented in the case record, along with the date and source of documentation. In such cases, agency staff shall:

- (1) Document in the case record steps taken to determine if the child is or is not an Indian child and the tribe's written statement declaring the child ineligible for membership.
- (2) Incorporate in any court hearing the tribe's written statement declaring the child ineligible for membership.

Five Year Review (FYR) Dates: 11/30/2022 and 11/30/2027

CERTIFIED ELECTRONICALLY

Certification

11/30/2022

Date

Promulgated Under: 119.03
Statutory Authority: 5103.03, 5153.166
Rule Amplifies: 5103.03, 5153.16
Prior Effective Dates: 04/01/1987, 02/01/2003, 04/20/2008, 02/01/2014,
02/01/2018