

5101:2-53-03

**Determination of Indian status, tribal eligibility and membership.**

- (A) The public children services agency (PCSA) or the private child placing agency (PCPA) ~~shall inquire upon the initial contact in every case to determine a family or child's Indian status.~~ shall follow all of the Indian child welfare rules and guidelines as outlined by the Indian Child Welfare Act (ICWA) 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 ~~the Indian Child Welfare Act (ICWA) as reauthorized by the "Child and Family Services Improvement Act" of 2006.~~ICWA.
- (B) For each referral the agency screens in, the agency shall make sufficient inquiry to determine whether a child or a family member of the child is a member or eligible for membership in an Indian tribe upon the initial face to face contact with the child's parent, guardian or custodian.
- ~~(B)~~(C) Upon preliminary contact with a family, if the child's parents, guardian or custodian are unavailable or unable to provide information regarding the Indian heritage, 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 ~~and~~ or the child may or may not be of Indian heritage.
  - (2) An examination of any other information bearing on the determination of the child's Indian heritage, such as a review of all documentation in the file, including contact with previous caseworkers and ~~or~~ communication from other sources, (~~i.e.e.g.~~, Indian tribes and Indian organizations).
- (C) ~~Once any suggestion of Indian heritage is discovered by the agency, the agency shall follow all of the Indian child welfare rules and guidelines as outlined by the ICWA, until otherwise determined that the family or child is not of Indian heritage or is not eligible for membership to a federally recognized tribe.~~
- (D) ~~When~~ If the agency is initiating court action for removal or custody of the child and information is obtained that suggests a child may be of Indian heritage but the tribe cannot be ~~determined~~ identified, the agency shall contact the bureau of Indian affairs (BIA), pursuant to paragraph (E) of this rule, to determine if:
- (1) The birth place of the child or parent is known to be a common residence of an Indian family.
  - (2) The surname of the child or parent is one identified to be common among members of Indian tribes.

(E) If the agency is initiating court action for removal or custody of the child and information is obtained that suggests a child is of Indian heritage, is a tribal member or is eligible for membership 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 days of the date the information was obtained; and

(2) Submit a request to the tribe by certified letter for written verification from the tribe regarding the child's eligibility for tribal membership. The agency's inquiry to the tribe shall be sent "return receipt requested" to a membership committee, an enrollment clerk, or individual who is accustomed to responding to questions about tribal membership. If the tribe does not respond, the caseworker shall contact the tribe by telephone and document contacts made in the case record. Sources of verification include, but are not limited to, the following:

(a) "U.S. Bureau of Indian Affairs, Minneapolis Area Midwest Regional Director, Bureau of Indian Affairs, One Federal Drive, Room 550, Fort Snelling, Minnesota 55111-4007."

(b) "Bureau of Indian Affairs, MS-4606-MIB, 1849 C Street, N.W., Washington, D.C. 20240."

(3) Bring to the juvenile court's attention, if applicable, any documentation submitted by the tribe and the agency's efforts to verify the child's Indian status.

(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.

(E) In order for the case worker to determine if the child may be an Indian child and is a

~~tribal member or eligible for membership, the tribe or possible tribes identified shall be contacted within fourteen days. The agency shall seek written verification from the tribe regarding the child's eligibility for tribal membership. The agency shall contact the tribe by fax and submit a request by certified letter to the tribe. The agency shall bring to the juvenile court's attention any documentation submitted by the tribe and the agency's efforts to verify the child's Indian status. The agency may contact the Ohio department of job and family services (ODJFS) for assistance as needed. Sources of verification include, but are not limited to, the following:~~

~~(1) "U.S. Bureau of Indian Affairs, Minneapolis Area Midwest Regional Director, Bureau of Indian Affairs, One Federal Drive, Room 550, Minneapolis, Minnesota 55111-4007."~~

~~(2) "Bureau of Indian Affairs, 1951 Constitution Avenue, Northwest, Washington, D.C. 20245."~~

(F) If the juvenile court takes action to verify the child's Indian heritage, the agency shall provide the court with assistance if so requested.

~~(G) The agency's inquiry to the tribe shall be sent "return receipt requested" to a membership committee, an enrollment clerk, or individual who is accustomed to responding to questions about tribal membership. If the tribe does not respond, the caseworker shall contact the tribe by telephone and document contacts made in the case record.~~

~~(H)(G) If a child's biological parent is a member of an Indian tribe but the child is not currently a member of a tribe, the caseworker shall ascertain whether the child is eligible for membership through the process outlined in paragraphs (B) and (E) of this rule. In order to apply for membership, the family shall submit an application for the child to become a member of his or her tribe. The agency shall assist the family in filing required paperwork documents if the family wishes to submit an application for the child to become a member of his or her tribe.~~

~~(H)(H) A child who is officially 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 should 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 the child's Indian/tribal ancestry 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.

Replaces: part of rule 5101:2-53-04

Effective:

R.C. 119.032 review dates: 10/08/2013

---

Certification

---

Date

Promulgated Under: 119.03  
Statutory Authority: 5103.03, 5153.16  
Rule Amplifies: 5103.03, 5153.16  
Prior Effective Dates: 4/1/87, 2/1/03, 04/20/2008