

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. 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.
- (B) Upon preliminary contact with a family, if the child's parents 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 the child may be Indian.
  - (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. 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 information is obtained that suggests a child may be of Indian heritage but the tribe cannot be determined, 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) 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) 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.

(I) 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.

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Certification

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