

5101:2-53-04

Indian Child Welfare Act (ICWA) notice requirements.

(A) When a public children services agency (PCSA) or private child placing agency (PCPA) knows or has reason to know that an Indian child is the subject of an involuntary foster care placement or termination of parental rights proceeding, the agency shall send notice of each proceeding to:

(1) Each tribe where the child is or may be a member, or eligible for membership if a biological parent is a member;

(2) The child's parents; and

(3) The child's Indian custodian, if applicable.

(B) If the identity or location of the child's parents, the child's Indian custodian, or the tribes in which the Indian child is a member or eligible for membership cannot be determined, but there is reason to know the child is an Indian child, the agency shall send the notice to the regional office of the bureau of Indian affairs (BIA) that is identified in paragraph (E) of this rule.

(C) The agency shall send the notice by registered or certified mail with return receipt requested. The agency may also send the notice via personal service or electronically. Such alternative methods do not replace the requirement for notice to be sent by registered or certified mail with return receipt requested.

(D) The notice shall be in clear understandable language and include the following:

(1) The child's name, birthdate, and birthplace;

(2) All known names (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and tribal enrollment numbers, if known;

(3) The names, birthdates, birthplaces, and tribal enrollment information of other direct lineal ancestors of the child, such as grandparents, if known;

(4) The name of each Indian tribe in which the child is a member, or may be eligible for membership if a biological parent is a member;

(5) A copy of the petition, complaint, or other document by which the child custody proceeding was initiated and, if a hearing has been scheduled, the date, time, and location of the hearing;

(6) Statements setting out the following:

- (a) The name of the petitioner and the name and address of the petitioner's attorney;
 - (b) The right of any parent or Indian custodian of the child, if not already a party to the child custody proceeding, to intervene in the proceedings;
 - (c) The Indian tribe's right to intervene at any time in a state court proceeding for the foster care placement of or termination of parental rights to an Indian child;
 - (d) That, if the child's parent or Indian custodian is unable to afford counsel based on a determination of indigency by the court, the parent or Indian custodian has the right to court-appointed counsel;
 - (e) The right to be granted, upon request, up to twenty additional days to prepare for the child custody proceedings;
 - (f) The right of the parent or Indian custodian and the Indian child's tribe to petition the court for transfer of the foster care placement or termination of parental rights proceeding to tribal court as provided by 25 U.S.C. 1911 (1978);
 - (g) The mailing addresses and telephone numbers of the court and information related to all parties to the child custody proceeding and individuals notified in accordance with this rule.
 - (h) The potential legal consequences of the child custody proceedings on the future parental and custodial rights of the parent or Indian custodian; and
 - (i) That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA.
- (E) The agency shall send a copy of the notice described in paragraph (D) of this rule to the regional office of the BIA at the following address: "Minneapolis Regional Director, Bureau of Indian Affairs, 331 Second Avenue South, Minneapolis, Minnesota 55401-2241." The copy of the notice shall be sent by registered or certified mail with return receipt requested, or by personal delivery.
- (F) If the agency does not have accurate contact information for a tribe, or the tribe contacted fails to respond to written inquiries, the agency should seek assistance in contacting the Indian tribe from the regional office of the BIA that is identified in paragraph (E) of this rule or the BIA's central office in Washington DC.

(G) If there is a reason to know that a parent or Indian custodian possesses limited English proficiency and is not likely to understand the contents of the notice, the agency shall provide language access services as required by Title VI of the Civil Rights Act (1964). The agency may contact or direct a party to contact the Indian child's tribe or the regional BIA office for assistance in locating and obtaining the name of a qualified translator or interpreter.

Effective:

Five Year Review (FYR) Dates:

Certification

Date

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