

5101:2-53-08

Placement preference of Indian children.

(A) When the public children services agency (PCSA) or private child placing agency (PCPA) has ~~temporary~~ custody of an Indian child, it shall select ~~a~~ the least restrictive substitute care setting that is consistent with the best interest and special needs of the child and that meets the following criteria:

(1) Most approximates a family, taking into consideration sibling attachment;

~~(1)(2) Is considered the least restrictive, most family-like setting available to meet the child's emotional and physical needs.~~ Allows the Indian child's special needs to be met; and

~~(2)(3) Is in close reasonable proximity to the home from which the child was removed or the home in which the child will be permanently placed~~ Indian child's home, extended family, or siblings.

~~(3) Is in close proximity to the school in which the child was enrolled prior to placement.~~

~~(4) Is designed to enhance the likelihood of achieving permanency plan goals.~~

~~(5) Is able to provide a safe environment for the child.~~

(B) In any substitute or pre-adoptive placement ~~consideration~~ of an Indian child where the Indian child's tribe has not established a different order of preference pursuant to paragraph (D) of this rule, the agency shall ~~consider placement~~ give preference to ~~in the following in order from least restrictive to most restrictive~~ to placement of the child with:

(1) A member of the Indian child's extended family;

(2) A foster home that is licensed, approved, or specified by the Indian child's tribe;

(3) An Indian foster home certified by the Ohio department of job and family services (ODJFS) or another state agency with such authority; or

(4) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(C) The agency shall attempt to place siblings in the same home unless it is not in the child's or siblings' best interest.

(D) When the Indian child's tribe establishes a different order of preference by resolution for a non-adoptive substitute care placement ~~or an adoptive placement~~, the agency ~~or~~

~~court effecting the placement~~ shall abide by the tribe's order so long as the placement is the least restrictive setting appropriate to the particular needs of the child.

(E) In any adoptive placement of an Indian child, where the Indian child's tribe has not established a different order of preference pursuant to paragraph (F) of this rule, ~~a placement preference shall be given in the following order, to the following, to placement of the child with:~~

- (1) A member of the child's extended family;
- (2) Other members of the Indian child's tribe;
- (3) Other Indian families; or
- (4) Other non-Indian prospective adoptive families.

(F) When the Indian child's tribe establishes a different order of preference by resolution for an adoptive placement, the agency shall abide by the tribe's order.

(G) In any substitute, pre-adoptive, or adoptive placement, where appropriate, the agency shall also consider the preference of the Indian child or the Indian child's parent.

~~(F)~~(H) If the agency believes that there is good cause not to abide by the order of placement preference, then its findings shall be based on one or more of the following considerations:

- (1) ~~The request of the one or both of the biological Indian child's parents or, when age-appropriate, by the Indian child, upon their review of the placement options;~~
- (2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
- (3) The presence of a sibling attachment that can be maintained only through a particular placement;
- ~~(2)~~(4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live, as determined by a qualified expert witness;
- ~~(3)~~(5) The unavailability of preferred families—a suitable placement after a determination by the court that a diligent search for such families has been conducted.

~~(G)~~(I) The burden of establishing the existence of good cause not to follow the order of placement preference is the responsibility of the agency, if the agency's decision is that the placement preference not be followed.

(J) A placement of an Indian child shall not depart from the preferences based on:

(1) The socioeconomic status of any placement relative to another placement; or

(2) Ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of the Indian Child Welfare Act (ICWA) (1978).

~~(H) Whenever an Indian child is placed by or leaves the custody of an agency, the agency shall complete a JFS 01646 "Report of Indian Child Placement" (rev. 11/2007). The JFS 01646 shall be submitted to ODJFS or documented in the statewide automated child welfare information system (SACWIS) within fourteen calendar days of the child's placement or termination from custody.~~

~~(I)~~(K) The Indian child's case record shall contain the complete record of placement determination. The agency shall maintain a record of every voluntary or involuntary foster care, preadoptive, and adoptive placement of an Indian child and make the record available within fourteen days of a request by an Indian child's tribe or the secretary. The record shall contain, at a minimum, the petition or complaint, all substantive orders entered in the child custody proceeding, the complete record of the placement determination, and if the placement departs from the placement preferences, detailed documentation of the efforts to comply with the placement preferences.

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