

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: The Ohio Department of Job and Family Services

Regulation/Package Title: OFC:FYR of OAC 5101:2-53 (ICWA)

Rule Number(s): 5101:2-53-03, 5101:2-53-05, 5101:2-53-06, 5101:2-53-08

Date: 08/21/2013

Rule Type:

☐ New

☒ Amended

☒ 5-Year Review

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

OAC 5101:2-53-03, "Determination of Indian status, tribal eligibility and membership" describes provisions for determining a child's Indian heritage and providing notice to the tribe or the Bureau of Indian Affairs. Language from rule 5101:2-53-04 has been merged into this rule. This rule has been reorganized to provide clarity. Corrections were made to the addresses for the Bureau of Indian Affairs and the regional office of the Bureau of Indian Affairs. Additionally, some language has been removed from this rule as it is duplicative of other rules.

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OAC 5101:2-53-05, "Voluntary placement for temporary custody of Indian child" describes the responsibilities of the Public Children Services Agencies (PCSAs) and the Private Child Placing Agencies (PCPAs) when a temporary agreement for temporary custody of an Indian child has been requested by a parent or custodian. This rule has been reorganized to provide clarity.

OAC 5101:2-53-06, "Emergency removal and involuntary custody of Indian children" describes the responsibilities of the PCSAs and PCPAs when an Indian child is in the agency's custody. Language from rule 5101:2-53-04 has been merged into this rule and the title of the rule has been changed to reflect the addition of this language. This rule has been reorganized to provide clarity. Additionally, some language has been removed as it is duplicative of other rules.

OAC 5101:2-53-08, "Placement preference of Indian children" describes the requirements of the PCSAs and PCPAs when an Indian child is removed from home and the requirements to place the child in accordance with the ICWA placement preference. Language from rule 5101:2-52-02 has been merged into this rule. Additionally, language has been added to clarify placement priorities.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Rule Number	Statutory Authority
5101:2-53-03	5103.03, 5153.16
5101:2-53-05	5103.03, 5153.15, 5153.16
5101:2-53-06	5103.03, 5153.16
5101:2-53-08	5103.03, 5153.16

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

Yes. Rules 5101:2-53-03, 2-53-05, 2-53-06, and 2-53-08 implement the Indian Child Welfare Act (ICWA), as reauthorized by the "Child and Family Services Improvement Act" of 2006. They are being amended as part of the five year review and enforce the provisions of the ICWA.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The requirements of these rules do not exceed the federal requirements.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The purpose of the regulation in rule 5101:2-53-03 is to provide procedures for determining whether a child who may have Indian heritage is a member of or eligible for membership in a tribe and therefore subject to ICWA regulations.

The purpose of the regulation in rule 5101:2-53-05 is to ensure that voluntary placement for temporary custody cases that are subject to ICWA are conducted in compliance with ICWA regulations.

The purpose of the regulation in rule 5101:2-53-06 is to ensure that agencies are in compliance with state law and with ICWA regulations when emergency removal of an Indian child from his or her home is necessary.

The purpose of the regulation in rule 5101:2-53-08 is to ensure that an Indian child who is removed from his or her home is placed into a substitute care setting in accordance with the placement preferences outlined by the ICWA.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Compliance with rules 5101:2-53-03, 2-53-05, 2-53-06, and 2-53-08 is not being tracked. However, agencies undergo compliance reviews once every two years as part of the recertification process which includes compliance with the requirements of these rules. Agencies are expected to comply with ICWA regulations whenever applicable.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

Rules 5101:2-53-03, 2-53-05, 2-53-06, and 2-53-08 were reviewed during the Partners For Ohio's Families (PFOF) Initiative. Stakeholders included county agency staff. The clearance period for these rules was 4/16/2013 through 4/30/2013.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The PFOF committee reviewing these rules made recommendations for removing duplicative language and clarifying existing language. One clearance comment that resulted in an alteration to the draft language was a request to clarify when an agency should begin making efforts to determine if a child may have Indian heritage. Language was added to require that the agency make sufficient inquiry about a family's Indian heritage at the first face-to-face contact after a referral has been screened-in.

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9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Not applicable.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

There were no other alternatives considered for rules 5101:2-53-03, 2-53-05, 2-53-06, or 2-53-08 as all parties involved were satisfied with the rules and the rules mirror federal language.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Rules 5101:2-53-03, 2-53-05, 2-53-06, and 2-53-08 require specific processes in order to ensure compliance with federal ICWA regulations.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

There is no duplication as these rules specifically implement the requirements of the ICWA and there are no other rules that do.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

When the rules are final filed, a transmittal letter will be generated explaining the changes to the rules and the rationale for the changes. The transmittal letters can be viewed at [http://emanuals.odjfs.state.oh.us/emanuals/GetDocument.do?nodeId=%23node-id\(59\)&docId=Document\(storage%3DREPOSITORY%2CdocID%3D%23node-id\(87890\)\)&locSource=input&docLoc=%24REP_ROOT%24%23node-id\(87890\)&version=8.0.0](http://emanuals.odjfs.state.oh.us/emanuals/GetDocument.do?nodeId=%23node-id(59)&docId=Document(storage%3DREPOSITORY%2CdocID%3D%23node-id(87890))&locSource=input&docLoc=%24REP_ROOT%24%23node-id(87890)&version=8.0.0).

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The rules in Chapter 5101:2-53 contain requirements for private child placing agencies. Requirements must be met to obtain and/or maintain certification by the State of Ohio. There are currently 26 certified private child placing agencies in Ohio.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

5101:2-53-03 – Requires the agency to make sufficient inquiry regarding a child's Indian heritage and to notify the child's possible tribe regarding court actions for removal or custody.

5101:2-53-05 – Requires the agency to submit a notification of a voluntary placement agreement to the designated agent of a child's tribe or the tribal court and document in the case record various custody information.

5101:2-53-06 – Requires the agency to notify the parents or Indian custodian and the Indian child's tribe or tribal court of all juvenile court proceedings involving foster care placement, termination of parental rights, pre-adoptive or adoptive placement and send various notification reports to the court and all parties involved.

5101:2-53-08 – Requires the agency to follow the placement preferences outlined in the ICWA when placing an Indian child in a substitute care setting. The agency must provide a placement report to ODJFS.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

Efforts have been made to obtain an example of the cost when a private child placing agency is required to implement ICWA regulations. ODJFS licensing staff and the Ohio Association of Child Caring Agencies (OACCA) were asked to obtain feedback from private child placing agencies that have had experience implementing these

regulations. Licensing staff and OACCA have been unable to determine any private child placing agencies that have had experience implementing the ICWA regulations.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The adverse impact is necessary to ensure compliance with federal regulations.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

There are no exemptions and no alternative means of compliance for rules 5101:2-53-03, 2-53-05, 2-53-06, or 2-53-08.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

There are no fines or civil penalties for non-compliance with these rules other than the forfeiture of certification through denial or revocation.

18. What resources are available to assist small businesses with compliance of the regulation?

ODJFS has regional offices with licensing specialists that will be assigned to assist the agency in compliance with the requirements of chapter 5101:2-53 when the agency determines that a child may have Indian heritage.

*** DRAFT - NOT YET FILED ***

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 ~~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:

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

*** DRAFT - NOT YET FILED ***

5101:2-53-05

Voluntary placement for temporary custody of Indian child.

- (A) A public children services agency (PCSA) or private child placing agency (PCPA) may accept a voluntary placement agreement for temporary custody of an Indian child from a parent, guardian or Indian custodian for the purpose of placing the child in substitute care only if the agreement is executed upon an JFS 01645 "Agreement for Temporary Custody of Child" (rev. 4/2006) and is recorded before a juvenile court, or a tribal court, if jurisdiction has been transferred there.
- (B) The agency shall submit a notification of the voluntary placement agreement to the tribe's designated agent or tribal court pursuant to rule 5101:2-53-03 of the Administrative Code. The tribe ~~still~~ retains the right to participate as an interested party or to intervene at any point, even if the tribe has declined to be involved.
- (C) An agency shall abide by the agreement for temporary custody ~~policies~~ requirements set forth in rules 5101:2-42-06, 5101:2-42-07 and 5101:2-42-08 of the Administrative Code, and shall ~~observe and~~ document in the child's case record that:
- (1) The agreement for temporary custody was not executed until at least ten days after the birth of the Indian child. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.
 - (2) The terms and consequences of the agreement for temporary custody ~~shall be~~ were fully explained in detail. If the agency has reason to believe that the parent or Indian custodian will not understand the agreement for temporary custody because of possible limited English proficiency, a copy of the agreement shall be sent to the bureau of Indian affairs (BIA) area office nearest to the residence of that person, and a request ~~is~~ made of BIA to arrange for translation in the language that the parent or Indian custodian best understands. The voluntary agreement for temporary custody shall not be executed until it has been translated into the language that the parent or Indian custodian best understands.
 - (3) The parent or legal guardian is requesting the agency take custody and provide services because one of the following conditions exists:
 - (a) The child cannot remain at home due to a temporary crisis in the family, and cannot safely stay with a member of the extended family or another responsible adult well known to the child.
 - (b) The child needs to be placed outside the home due to problems in the

family that could compromise the safety of a family member, and a placement of limited duration with assistance from the agency providing intensive services that are likely to reunite the family and reduce the safety concerns is needed.

- (4) The parent or legal guardian or custodian is immediately and temporarily unable to fulfill his or her parental responsibilities and this inability will be alleviated with short-term placement.
- ~~(3) The terms and consequences of the agreement for temporary custody are recorded in the case record with the following information:~~
- ~~(a) The parent or legal guardian is requesting the agency take custody and provide services.~~
- ~~(b) The parent or legal guardian or custodian is immediately and temporarily unable to fulfill his or her parental responsibilities.~~
- ~~(c) This inability will be alleviated with short term placement when one of the following conditions exists:~~
- ~~(i) The child cannot remain at home due to a temporary crisis in the family, and cannot safely stay with a member of the extended family or another responsible adult well known to the child.~~
- ~~(ii) The child needs to be placed outside the home due to problems in the family that could compromise the safety of a family member, and a placement of limited duration with assistance from the agency providing intensive services that are likely to reunite the family and reduce the safety concerns.~~
- (D) Any parent or Indian custodian may withdraw consent to a foster care placement under law at any time, orally or by written notification and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.
- (E) If a parent or Indian custodian request the termination of the voluntary agreement and the agency has reason to believe the child will be unsafe if returned home to the parent or Indian custodian, the agency shall submit a request to the juvenile court requesting temporary or permanent custody.

Effective:

R.C. 119.032 review dates:

Certification

Date

Promulgated Under:	119.03
Statutory Authority:	5103.03, 5103.15, 5153.16
Rule Amplifies:	5103.03, 5103.15, 5153.16
Prior Effective Dates:	4/1/87, 1/1/90, 2/1/03, 04/20/2008

*** DRAFT - NOT YET FILED ***

5101:2-53-06

Emergency removal and involuntary involuntary custody of Indian children.

(A) A public children services agency (PCSA) can take emergency protective custody of any Indian child pursuant to paragraph (C) of rule 5101:2-39-01 of the Administrative Code regardless of the jurisdictional status of his or her tribe as long as the child is in danger of imminent physical damage or harm.

(B) When emergency removal of a child from his or her own home is necessary, the PCSA shall consider the child's racial or ethnic background to determine Indian heritage. In such cases where the circumstances during the removal are not favorable to identify or inquire if a child is of Indian heritage, upon the agency's initial contact the case worker shall take the required steps to determine the Indian status of eligibility and membership. The agency shall act in accordance with the requirements set forth in paragraph (C) of rule 5101:2-53-03 of the Administrative Code.

~~(A)(C)~~ Prior to an involuntary custody court proceeding, the ~~public children services agency (PCSA)~~ PCSA or private child placing agency (PCPA) shall provide the court with information which either proves or suggests a child is a member of an Indian tribe and is eligible to be within the jurisdiction of a tribal court pursuant to rule 5101:2-53-03 of the Administrative Code.

~~(B) All juvenile court proceedings are to be notified to the tribe's designated agent or tribal court by the agency or every proceeding affecting their tribal member even if the tribe has declined to be involved. The tribe still retains the right to participate as an interested party or to intervene at any point in the proceeding.~~

~~(C)(D)~~ Notices shall be sent by the agency to The agency shall notify the parents or Indian custodian and the Indian child's tribe or tribal court, region director at the bureau of Indian affairs (BIA), and the U.S. secretary of the interior of all juvenile court proceedings involving foster care placement, termination of parental rights, pre-adoptive or adoptive placement. A notice shall be sent The agency shall send the notice by registered mail with "return receipt requested" and the notice shall include:

(1) The name of the Indian child.

(2) The Indian child's tribal affiliation.

(3) A copy of the petition, complaint, or other document by which the proceeding was initiated.

- (4) The name of the petitioner and the name and address of the petitioner's attorney.
 - (5) A statement of the right of the parent or Indian custodian and the child's tribe to intervene in the proceeding.
 - ~~(a) If there is a reason to believe that the parent or Indian custodian will not understand the notice because of possible limited English proficiency, a copy of the notice shall be sent by the agency to the BIA area office nearest to the residence of that person, and a request made of BIA to arrange for translation in the language that the parent or Indian custodian best understands.~~
 - ~~(b) The PCSA or PCPA shall document the request for translation in the file.~~
 - (6) A statement of the right of the parent or Indian custodian and the Indian child's tribe that no temporary or permanent court commitment proceeding ~~or permanent court commitment proceeding~~ shall be held until at least ten days after the parent or Indian custodian and the Indian child's tribe have received notice of the agency's intention to commence such an involuntary court action. This statement shall also include the provision that, upon request, the parent or Indian custodian or the Indian child's tribe shall be granted up to twenty additional days to prepare for the proceedings.
 - (7) The location, mailing address, and telephone number of the juvenile court.
 - (8) A statement of the right of the parent or Indian custodian or the Indian child's tribe to petition the juvenile court to transfer the proceeding to the Indian child's tribal court.
 - (9) A statement of the potential legal consequences of an adjudication on future custodial rights of the parents or Indian custodians.
 - (10) A statement ~~in the notice to the Indian tribe that since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's right under the act regarding the confidential nature of child custody proceedings.~~
- (E) If there is reason to believe that the parent or Indian custodian will not understand the notice because of possible limited English proficiency, a copy of the notice shall be sent by the agency to the BIA area office nearest to the residence of that person, and a request made of BIA to arrange for translation in the language that the parent

or Indian custodian best understands. The PCSA or PCPA shall document the request for translation in the file.

(F) The agency shall notify the tribe's designated agent or tribal court affecting their tribal member even if the tribe has declined to be involved. The tribe retains the right to participate as an interested party or to intervene at any point in the proceeding.

~~(D)~~(G) If the identity or location of the parent or Indian custodian and the tribe cannot be ~~determined~~identified, the agency shall send the same type of notification identified in paragraph ~~(B)~~(D) of this rule in the same manner to the region director at BIA and U.S. secretary of the interior, who shall have fifteen days after receipt to notify the parents or Indian custodian and the tribe.

~~(E) The agency shall be able to document with clear and convincing evidence, including testimony by one or more qualified witnesses, that the continued custody by the parent or Indian custodian would likely result in serious physical or emotional harm to the child. To be clear and convincing, the evidence shall show:~~

~~(1) The existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the particular child who is the subject of the proceeding.~~

~~(2) The evidence shall show the causal relationship between the conditions that exist and the damage that is likely to result.~~

~~(F)~~(H) ~~When~~ If the agency recommends foster placement, an affidavit documenting active efforts shall be submitted to the court ~~and contains~~ containing all of the following information: ~~and record in the case record:~~

~~(1) A description of active efforts to reunify the family since the last disposition or review hearing and if those efforts were not successful, an explanation regarding why.~~

~~(2)~~(1) A description of active efforts to coordinate with the child's tribe or any Indian organization in assisting the Indian parent or Indian custodian with services needed to ~~avoid~~ prevent the need for placement, and an explanation of why these services were unsuccessful in maintaining the child in the home.

~~(3)~~(2) An explanation of why the child cannot be protected from serious emotional or physical harm if the child remains in the home even if services are provided to the child and family.

~~(4)~~(3) An explanation of the diligent efforts made to contact the child's extended family about providing a placement for the child or, if any members are not

known, diligent efforts made to contact the child's tribe and other local Indian organizations for assistance in identifying and contacting extended family, other tribal members, or Indian families for placement.

~~(5) That efforts were made by the agency to ensure the child's visitation with extended family, or with other tribal members, to ensure the child's ongoing participation in his/her culture.~~

~~(6) That efforts were made by the agency for the child to attend significant cultural and familial events. These arrangements are to be coordinated with the child's tribe.~~

~~(G)~~(I) The agency shall submit a report that contains the following information at the review hearing:

(1) A description of active efforts to reunify the family since the last disposition or review hearing and if those efforts were not successful, an explanation regarding why.

(2) That efforts were made by the agency to arrange for the child's visitation with extended family, or with other tribal members, to ensure the child's ongoing participation in his or her culture.

~~(4)~~(3) A statement of family changes needed to correct the problems necessitating intervention, with timetables for accomplishing them.

~~(2)~~(4) A description of services to be provided to assist the family, specifically identifying those made available with assistance from the tribe or an Indian organization.

~~(3)~~(5) A description of services to be provided to ensure the child's ongoing connection to ~~his/her~~ his or her culture while placed outside of his/her family, including attendance at significant cultural events.

~~(4)~~(6) A description of actions to be taken by the parents to correct the identified problems, and of the parents' compliance with the case plan thus far.

~~(5)~~(7) ~~The agency shall be able to document~~ A statement that active efforts have been made to provide services to rehabilitate or prevent the breakup of the Indian family and that these efforts were not successful.

~~(H)~~(J) If the agency petitions the court for termination of parental rights, ~~The the~~ agency shall ~~act in accordance with the requirements and policies set forth in rule~~

~~5101:2-42-95 of the Administrative Code. When the agency submits a report requesting termination of parental rights to the court, include the following items should be included~~information in the petition:

- (1) The description of circumstances supporting the grounds for termination.
- (2) A description of the active efforts made to provide remedial services and rehabilitative programs as coordinated efforts to prevent the breakup of the family and why these efforts were unsuccessful.
- (3) A description of the active efforts made to assist the Indian parent or custodian with services needed to avoid termination of parental rights and an explanation of why these efforts were unsuccessful.
- (4) An explanation of why the child cannot be protected from the identified problems in the home.
- ~~(5) Tribal correspondence or supporting documentation sent to the agency and a summary of the agency's understanding of the tribe's position regarding the permanency plan.~~
- (5) A summary of the tribe's position regarding the permanency plan, including any attachments or supporting documents sent by the tribe to the agency.
- ~~(6) An explanation of the active efforts sought in the placement preference and contacting the child's tribe, extended family, or other local Indian organizations about providing an appropriate placement for the child.~~completed pursuant to rule 5101:2-53-08 of the Administrative Code.
- ~~(7) If the child is not placed within the Indian tribe's preference, an explanation of why the child cannot be moved to a placement that meets the preferences established within the Indian Child Welfare Act (ICWA).~~
- ~~(8)~~(7) A description of arrangements made by the agency to ensure visitation is ~~protected~~ and all efforts made to ~~support~~ maintain the child's cultural connections.
- ~~(9)~~(8) A permanency plan for the child.
- ~~(I) In accordance with 25 U.S.C. section 1912(f) (2001), no termination of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in~~

~~serious emotional or physical damage to the child.~~

~~(J)~~(K) Upon the agency's determination that there are compelling reasons not to pursue ~~terminating~~ termination of parental rights or reunification, the agency shall ~~submit~~ petition the court for a planned permanent living arrangement to the court disposition. The planned permanent living arrangement ~~report~~ petition shall include the following:

- (1) Documented facts and circumstances refuting the grounds for termination of parental rights. The agency has to show that although the child cannot be returned home, termination of parental rights is not in the child's best interest.
- (2) A description of why the planned permanent living arrangement is in the child's best interest.
- (3) A description of the active efforts made to provide remedial services and rehabilitative programs as coordinated efforts to prevent the breakup of the family and why these efforts were unsuccessful.
- (4) An explanation of the active efforts made to contact the child's tribe, extended family, and other local Indian organizations for assistance in identifying a culturally appropriate placement for the child.
- (5) ~~If the child is not placed following the tribes placement preference, an~~ An explanation of why the child cannot be moved to a placement that meets the preferences established within ICWA in accordance with rule 5101:2-53-08 of the Administrative Code if the child is not placed with the tribal placement preference.
- (6) A description of arrangements made by the agency to ensure visitation with extended family, or, if there is no extended family, with other tribal members, to support the child's cultural connections.
- (7) A summary of the tribe's position regarding the permanency plan, including any attachments or supporting documents sent by the tribe to the agency.
- (8) A plan to ensure the stability of the planned permanent living arrangement.

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

Effective:

R.C. 119.032 review dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 5103.03, 5153.16
Rule Amplifies: 5103.03, 5153.16
Prior Effective Dates: 3/20/87, 2/1/03, 04/20/2008

*** DRAFT - NOT YET FILED ***

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 substitute care setting that is consistent with the best interest and special needs of the child and that meets the following criteria:

- (1) Is considered the least restrictive, most family-like setting available to meet the child's emotional and physical needs.
- (2) Is in close proximity to the home from which the child was removed or the home in which the child will be permanently placed.
- (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.

~~(A) The placement preference requirements shall be in accordance with the Indian Child Welfare Act (ICWA) (1978), based on the prevailing social and cultural standards:~~

- ~~(1) In which the parent or extended family resides; or~~
- ~~(2) With which the parent or extended family members maintain social and cultural ties.~~

~~(B) When an Indian child must be removed from his or her home and placed into substitute care (nonadoptive), the public children services agency (PCSA) or private child placing agency (PCPA) shall:~~

- ~~(1) Select the least restrictive setting, in a most family like setting to meet the child's needs.~~
- ~~(2) Place within reasonable proximity to his or her home, taking into account any special needs of the child.~~

~~(C)~~(B) In any substitute or ~~preadoptive~~pre-adoptive placement consideration, the agency shall consider placement preference to the following in order from least restrictive to most restrictive:

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

- (2) A foster home 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.
 - (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 (~~nonadoptive~~) 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.
- ~~(1) The placement is the least restrictive setting appropriate to the particular needs of the child.~~
- ~~(2) Where appropriate, in a voluntary placement agreement only, the preference of the Indian child or parent shall be considered. If a consenting parent evidences a desire for anonymity, the court shall give weight to such desire in applying the preferences.~~
- (E) In any adoptive placement of an Indian child, a placement preference shall be given, to the following:
- (1) A member of the child's extended family.
 - (2) Other members of the Indian child's tribe.
 - (3) Other Indian families.
 - (4) Other non-Indian prospective adoptive families.
- (F) 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 biological parents or, when age-appropriate, by the Indian child.

- (2) The extraordinary physical or emotional needs of the child as determined by a qualified expert witness.
 - (3) The unavailability of preferred families after a diligent search for such families has been conducted.
- (G) 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.
- (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) The Indian child's case record shall contain the complete record of placement determination.

Replaces: part of rule 5101:2-53-02

Effective:

R.C. 119.032 review dates:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 5103.03, 5153.16
Rule Amplifies: 5103.03, 5153.16
Prior Effective Dates: 3/20/87, 04/20/2008