



## Common Sense Initiative

**Mike DeWine**, Governor  
**Jon Husted**, Lt. Governor

**Joseph Baker**, Director

### MEMORANDUM

**TO:** Mike Lynch, Ohio Department of Job and Family Services

**FROM:** Michael Bender, Business Advocate

**DATE:** November 23, 2022

**RE:** **CSI Review – Indian Child Welfare Act Five Year Review – No Change (OAC 5101:2-53-02, 5101:2-53-03, and 5101:2-53-08)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Department as provided for in ORC 107.54.

#### Analysis

This rule package consists of three no-change rules proposed by the Ohio Department of Job and Family Services (ODJFS) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on October 26, 2022, and the public comment period was held open through November 2, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on October 26, 2022.

Ohio Administrative Code (OAC) 5101:2-53-02 explains when the requirements of the 1978 federal Indian Child Welfare Act (ICWA), as reauthorized by the Child and Family Services Improvement Act of 2006, apply to child custody proceedings and when they do not. OAC 5101:2-53-03 provides the steps to be taken by a public children services agency (PCSA) or a private child placing agency (PCPA) when determining whether a child is an Indian child. OAC 5101:2-53-08 specifies the requirements for PCSAs and PCPAs to follow regarding orders of preference when selecting a placement setting for an Indian child.

During early stakeholder outreach, ODJFS made the draft rules available via external clearance for a

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two-week period in September and October 2022. ODJFS received no comments from stakeholders during this time period. The draft rules were also shared with the Public Children Services Association of Ohio (PCSAO), which in turn shared them in its weekly update in early October 2022. No input was provided by the PCSAO either. No comments were received during the CSI public comment period.

The business community impacted by the rules includes PCSAs and PCPAs. ODJFS notes that there are twenty-five certified PCPAs in Ohio. The adverse impacts created by the rules include following procedures for determining whether a child in a custody proceeding is an Indian child, following placement preferences as outlined in the ICWA when placing an Indian child in a substitute care setting, and providing a report to ODJFS. The Office of Families and Children within ODJFS reached out to PCPAs and to the Ohio Children's Alliance for examples of costs incurred when implementing ICWA regulations. Responses from two agencies that worked on four different cases indicated that the estimated cost of implementing ICWA regulations was approximately \$2,000-\$2,500 per case. According to ODJFS, the requirements of the rules must be met in order to obtain and/or maintain certification by the State of Ohio. ODJFS states that the adverse impacts to business are justified to ensure compliance with federal regulations, protect the best interests of Indian children, and promote the stability of Indian tribes and families.

### **Recommendations**

Based on the information above, the CSI Office has no recommendations on this rule package.

### **Conclusion**

The CSI Office concludes that ODJFS should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.