INDIAN CHILD WELFARE POLICIES AND PROCEDURES

27. Definitions

Active Efforts means affirmative, active, thorough, complete, and timely efforts intended primarily to maintain or reunite children who are or may be Indian children with parents, Indian custodians or legal guardians. See 25 CFR 23.2; RCW 13.38.040(1). Active Efforts:

- Are:
  - A higher standard than reasonable efforts and therefore require DCYF to provide more support, engagement, and services than reasonable efforts.
  - Distinct because it's inclusive of due diligence.
  - Provided to the maximum extent possible in a manner consistent with the prevailing social and cultural conditions and way of life of children's tribes.
  - Conducted in partnership with children and their parents or guardians, extended family members, Indian custodians, and tribes.
  - Tailored to the facts and circumstances of the case.
- Involve engaging, assisting, and supporting parents or Indian custodians throughout the life of a case including accessing services and fulfilling the steps of a case plan and court order, if applicable, and actively working with parents to address barriers to the parents' or Indian custodian's success.
- Include detailed documentation of all services, support, and engagement.

Best Interests of Indian Children is defined in RCW 13.38.040(2) and refers to the use of practices in accordance with the federal Indian child welfare act, and other applicable laws, that are designed to accomplish the following:

- Protect the safety, well-being, development, and stability of the Indian child.
- Prevent the unnecessary out-of-home placement of the Indian child.
- Acknowledge the right of Indian tribes to maintain their existence and integrity which will promote the stability and security of their children and families.
- Recognize the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community.
- In a proceeding under this chapter where out-of-home placement is necessary, to prioritize placement of the Indian child in accordance with the placement preferences of this chapter.

Canadian First Nations is a reference to:

- Individuals who most often have Indian status under Canadian law as a part of a recognized community. They are also called First Peoples or Aboriginal.
- Communities or bands recognized under Canadian law.

Cultural Agreements are forms of agreement negotiated between tribes and Indian children's guardianship caregivers or adoptive parents. These agreements outline actions taken by the adoptive parents or guardians to ensure Indian children are connected to their tribal community, culture, and government, e.g., keeping children up to date on tribal news and happenings, having children attend tribal ceremonies and cultural camps, keeping connections with relatives, etc.

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Due Diligence means active and persistent efforts, e.g. performing regular telephonic, email, mail, or fax outreach activities to fulfill the requirements of the Tribal Inquiry and Indian Child Welfare Act (ICWA) Notice to Tribes policies, as applicable for:

- Known tribes which is to:
    - Identify and work with all the tribes of which there is reason to know the child may be a member or eligible for membership.
    - Verify whether the child is in fact a member or eligible for membership.
- Unknown tribes which is to contact the Bureau of Indian Affairs office.

Domicile for a parent or Indian custodian means the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere. For an Indian child, the domicile of the Indian child's parents or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's custodial parent.
See 25 C.F.R. § 23.2

Federal Indian Child Welfare Act (ICWA) is a federal law enacted in 1978. This law recognizes the importance of maintaining a child's connections with his or her extended family, Indian tribe and its culture when an Indian child is the subject of a child custody proceeding. The law sets minimum standards for the removal of Indian children from their families and for terminating parental rights, addresses tribes' exclusive and concurrent jurisdiction, establishes priorities for placement of Indian children in foster or adoptive homes, and requires official notice of juvenile dependency, guardianship, and termination of parental rights proceedings to the tribe of an Indian child.
25 U.S.C. 1901 *et seq.*

Federally Recognized Tribes mean any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native Village. 25 U.S.C. 1903(8).

Government-to-Government Relationship means the recognition of, and respect for, the sovereign status of Washington state and the inherent sovereign status of federally recognized Indian tribes. This relationship enhances and improves communications between the two governments and facilitates the resolution of issues. Chapter 43.376 RCW

Indian Children means any unmarried and unemancipated persons who are under age eighteen and are, as determined by the Indian child's tribe, one of the following:

- Members of an Indian tribe.
- Eligible for membership in an Indian tribe.
  25 U.S.C. § 1903 (4); 25 C.F.R. § 23.2 and RCW 13.38.040(7) (12)

Indian Child's Tribes means (a) Indian tribes in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts. 25 U.S.C. § 1903(5) and RCW 13.38.040(10).

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Indian Custodians are any Indian individuals who have legal custody of an Indian child under applicable Tribal law or custom or under applicable State law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child. An Indian may demonstrate that he or she is an Indian custodian by looking to Tribal law or Tribal custom or State law. 25 U.S.C. § 1903(6)

Indian Tribes mean any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native Village. 25 U.S.C. § 1903(8)

Known Tribes means when there is reason to know children have tribal heritage or Indian ancestry from either a:

- Specific tribe or tribes, e.g., Swinomish Indian Tribal Community, Pueblo of Acoma, Blue Lake Rancheria, Choctaw Nation, Native Village of Scammon Bay
- Tribal or cultural group, e.g., Lakota, Tlingit, Paiute, Yupik, Aleutian, Athabaskan

Local Indian Child Welfare Advisory Committees (LICWAC) are committees designed to ensure protection of the Indian identity of Indian children, their rights as Indian children, and the maximum utilization of available Indian resources for Indian children. To ensure the realization of this intent, information about each current and future case involving Indian children for whom DCYF has a responsibility must be referred to LICWAC on an ongoing basis when a federally recognized tribe has not responded, is unavailable, or requests LICWAC involvement according to procedures which recognize the privacy rights of the families. The purposes of LICWACs are to:

- Promote social service planning for Indian children;
- To encourage the preservation of the Indian family, tribe, heritage, and identity of each Indian child served by the DCYF;
- Assist in obtaining participation by representatives of tribal governments and Indian organizations in departmental planning for Indian children for whom the department has a responsibility.

Memoranda of Agreements are documents used to clarify roles and responsibilities and enhance coordination and cooperation between DCYF and federally recognized tribes in providing appropriate child welfare services to children who are or may be Indian children.

Non-federally Recognized Tribes means any tribe, Band, or other organized group or community of Indians that has not been recognized as eligible for services provided to Indians by the Secretary of the Interior.

Qualified Expert Witnesses (Contracted) are qualified individuals with a Department of Enterprise Services statewide or DCYF contract to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. These individuals must be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe.

Qualified Expert Witnesses (Tribally Designated) are qualified individuals designated by the tribe to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe.

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Reason to Know Children Are or May Be Indian applies when children:

- Are or may:
    - Be a citizen or a member of a federally recognized tribe as identified by that tribe.
    - Be eligible for citizenship or membership in a federally recognized tribe.
    - Have tribal heritage or Indian ancestry in a federally recognized tribe or there is an indication of it. This includes but is not limited to, instances where information is received from any person involved in the case or discovered indicating that the child or parent have or may have:
        - Tribal affiliation, heritage, ancestry, descendancy, or lineage. The name of a specific tribe is not necessary.
        - Been a ward of a tribal court.
        - Previously accessed services at a tribal clinic or Indian Health Board clinic or Indian boarding school.
        - Is domiciled or a resident on a reservation or Alaska Native village.
        - Is affiliated with an Alaska Native Corporation.

Tribal Courts mean courts run by a tribal government with jurisdiction over child custody proceedings. These may be:

- A court of Indian offenses.
- A court established and operated under the code or custom of any federally recognized Indian tribe.
- Any other administrative body of a federally recognized Indian tribe that is vested with authority over child custody proceedings.

Tribal Heritage or Indian Ancestry means an individual has American Indian or Alaska Native affiliation, heritage, ancestry, descendancy, or lineage; or identifies their race or ethnicity as being American Indian or Alaska Native. This is different from being a member or citizen of a Tribe.

Tribal Jurisdiction means when a tribe's authority to adjudicate, or decide, a dependency, termination of parental rights, guardianship, pre-adoptive, adoptive, customary adoption or any other child custody proceeding.

Tribal Sovereignty means that a tribal government has the power to make and enforce laws, and to establish courts and other forums for resolution of disputes. The sovereignty that American Indian Tribes possess is inherent and existed before the founding of the United States.

Unknown Tribes means when there is reason to know children have native ancestry or Indian heritage, but no specific tribe or tribes or cultural groups, have been identified after follow-up questioning. This includes references to state or geographic regions.

Washington State Indian Child Welfare Act (WICWA) is a Washington State law enacted in 2011. This law recognizes the importance of protecting the essential tribal relations and best interests of Indian child by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the children, or the interests of their tribe. The law supplements the federal ICWA and was a step in clarifying existing laws and codifying existing policies and practices regarding Indian child welfare. Chapter 13.38 RCW.

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