INDIAN CHILD WELFARE POLICIES AND PROCEDURES

19. Qualified Expert Witnesses for Indian Child Welfare (ICW) Cases

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Approved by: Frank Ordway, Chief of Staff

Purpose

The purpose of this policy is to provide guidance when qualified expert witnesses (QEWs) are needed to testify in court hearings.

Scope

This policy applies to Department of Children, Youth, and Families (DCYF) employees.

Laws

Chapter 13.38 RCW	Indian Child Welfare Act
25 U.S.C. § 1901-1923	Indian Child Welfare Act

Policy

1. DCYF employees must obtain a QEW designated by the tribe or contracted with DCYF for the following court proceedings when DCYF is requesting out-of-home placement and there is reason to know children are or may be Indian children:
    a. Earliest 30-day shelter care, but if not possible then, at the initial dependency fact-finding
    b. Guardianship
    c. Termination of parental rights (TPR)
2. Office of Tribal Relations (OTR) must:
    a. Collaborate with the tribal partners, Headquarters Contracts unit, Indian Child Welfare (ICW) Subcommittee of the Tribal Policy Advisory Committee, and caseworkers to establish contracts for QEWs.
    b. Assist caseworkers in locating a QEW if they cannot identify a tribally-designated or contracted QEW.
3. DCYF employees:
    a. Must not serve as a QEW on cases:
        i. They are assigned to.
        ii. They are responsible for overseeing.
        iii. That are located in their region.
        iv. They have personal knowledge of, or association with the case, even if they are from outside of the region.
    b. May serve as a QEW at the 30-day shelter care hearing on ICW cases out of their region if:
        i. There is no known tribe and efforts to obtain a QEW are unsuccessful.
        ii. They are on the DCYF Employee QEW list maintained by OTR.

Procedures

1. OTR must:

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a. Maintain an approved QEW list of:
    i. Contracted individuals
    ii. DCYF employees
b. Verify:
    i. QEWs who aren't tribally designated or DCYF employees are contracted with DCYF, as outlined in the DCYF Administrative 4.01 Contracting policy.
    ii. QEWs have access to DCYF related child welfare trainings.
    iii. Tribally-designated QEWs complete and clear the background check prior to having unsupervised access to children.
    iv. Contracted and DCYF employee QEWs complete QEW child welfare training requirements, including, but not limited to, information about:
        A. Washington State court processes.
        B. How to testify effectively in court and how to present qualifications.
        C. How to work effectively with Assistant Attorney Generals (AAGs) and defense attorneys.
        D. How to access necessary case information.
c. Collaborate with:
    i. Contracts Unit to contract with QEWs.
    ii. ICW Subcommittee of the Tribal Policy Advisory Committee to:
        A. Develop a method of determining compensation rates for approved QEW services for contracted QEWs.
        B. Develop minimum qualifications for contracted QEWs in Washington State.
        C. Determine what qualifications constitute:
            I. Extensive knowledge of prevailing social and cultural standards and child rearing practices within the child's tribe.
            II. Knowledge of prevailing social and cultural standards and child rearing practices in Indian tribes with cultural similarities to the child's tribe.
        D. Track contracted QEWs' completed trainings.
d. Assist caseworkers find a DCYF employee QEW if they are unable to identify a tribally-designated or contracted QEW.

2. Obtaining Tribally-Designated or Contracted QEWs

When it's been determined that continued parental or Indian custodial custody is likely to result in serious emotional or physical damage to their children and there is reason to know children are or may be Indian children, caseworkers or active specialists must:

a. Obtain a QEW at the earliest 30-day shelter care hearing if possible but no later than the dependency fact-finding and disposition. QEW testimony is only required for one 30-day shelter care hearing. If it's not possible to obtain a QEW at each 30-day shelter care hearing where QEW testimony hasn't been presented in the dependency case:
    i. Introduce evidence of efforts to obtain a QEW and why it wasn't possible to obtain a QEW at each 30-day shelter care hearing.
    ii. Present QEW testimony at the dependency fact-finding and disposition hearing.
b. Caseworkers or active effort specialists must as soon as possible, but no later than 20 calendar days prior to 30-day shelter care, dependency fact-finding, Title 13 Guardianship, and TPR court hearings complete the following when there are:
    i. Multiple tribes and the court hasn't designated a tribe as the child's tribe, determine if there is a tribally-designated QEW by either:
        A. Reviewing the Indian child's tribe's Memoranda of Agreement.

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B. Contacting and coordinating with the child's known tribes by phone, email, or fax if a QEW isn't identified in the MOA or there is no MOA.

ii. No known tribes, no tribes have intervened or are participating, or the tribes have failed to identify a QEW at least 14 calendar days prior to the court hearing:

A. Caseworkers must:

I. Immediately email OTR to identify an appropriate contracted QEW.

II. Document and present evidence to the court of DCYF efforts made to obtain a QEW.

III. Inform known tribes of the chosen QEW, when applicable. If tribes object to the identified QEW, coordinate with the regional ICW consultant to identify a new tribally approved QEW.

B. When notified by caseworkers, OTR must immediately identify a contracted QEW who meets one or more of the following requirements, in descending order of preference:

I. Be a member of the child's Indian tribe or is chosen and recognized by the tribe as knowledgeable regarding tribal customs specific to family organization or child rearing practices.

II. Has substantial experience in the delivery of child and family services to Indians and has extensive knowledge of social and cultural standards and child rearing practices within the:

i. Indian child's tribe.

ii. Indian tribes with cultural similarities to the Indian child's tribe.

iii. Delivery of child and family services to Indians if no tribe has been identified.

iv. Is a professional who has substantial education and experience in a specialty area related to the tribe.

3. Once caseworkers have the name of the QEW, they must coordinate with the AAG and contact the QEW, to:

a. Review the case file and discuss with them, their:

i. Role as a QEW on the case and what they will be asked to testify about. This includes, but isn't limited to:

A. The QEW's:

I. Qualifications and knowledge about the social and cultural standards of the child's tribe and the delivery of child and family services to Indians.

II. Potential testimony regarding:

i. Active efforts made by DCYF and the outcomes, if those efforts have proven unsuccessful.

ii. The placement and compliance with the requirements outlined in the Chapter 18. Placement Preferences policy.

B. Whether custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

ii. Opinion on the case. If there is disagreement about whether the child's continued custody with their parent or Indian custodian is likely to result in serious emotional or physical damage and it cannot be resolved, discuss the disagreement and review with the supervisor.

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b. Provide the information necessary for the QEW to testify and provide them updates, as necessary.
c. Encourage the QEW to:
    i. Meet with the parents, guardians, or Indian custodians and children in the case.
    ii. Collaborate with the caseworker and designated tribal employees to understand the case and case plan.

4. Employees must document communication and activities to obtain a QEW in FamLink case notes and selecting “Tribal Contact” under the activities tab.

Resources

25 CFR Part 23 Bureau of Indian Affairs ICWA Proceedings
Chapter 8. Guardianship
Chapter 9. Termination of Parental Rights
Chapter 20. Placement Preferences policy
DCYF Administrative 4.01 Contracting policy (located on the Administrative policies page on the DCYF intranet)
Office of Tribal Relations (OTR) web page on the Internet
Tribal/State Memoranda of Agreement

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