INDIAN CHILD WELFARE POLICIES AND PROCEDURES

8. Guardianships

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Approved by: Frank Ordway, Chief of Staff

Purpose

The purpose of this policy is to provide guidance on how to comply with federal and state Indian Child Welfare Acts (ICWA) when considering, discussing, identifying, and establishing guardianships as the permanent plan in cases when there is reason to know children are or may be Indian children.

Scope

This policy applies to caseworkers.

Laws

Chapter 11.30 RCW	Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act
Chapter 13.36 RCW	Guardianship
Chapter 13.38 RCW	Indian Child Welfare Act
25 U.S.C. § 1901-1923	Indian Child Welfare Act

Policy

When there is reason to know children are or may be Indian children, and guardianship is being considered or has been identified as the permanent plan caseworkers must:

1. Collaborate with known tribes before making legal decisions about the case and provide them with the information necessary to participate in the legal hearings.
2. Follow the:
    a. Child Welfare Guardianships policy.
    b. Transferring Cases to Tribal Court policy when the permanent plan of guardianship has been approved through tribal court.

Procedures

When there is reason to know children are or may be Indian children and their permanent plan is guardianship, caseworkers must:

1. Prior to recommending that Chapter 13.36 RCW guardianship to be the primary permanent plan, at the shared planning meeting (SPM), caseworkers must:
    a. Contact tribes in which the child is a member or eligible for membership to ask if either they wish to:
        i. File a case in tribal court.
        ii. Transfer the case to tribal court.
    b. Review the permanency recommendations of Local Indian Welfare Advisory Committee (LICWAC) meetings, if applicable.

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c. Facilitate a shared planning meeting (SPM)
    i. Invite all known tribes.
    ii. Collaborate with known tribes to determine the:
        A. Most appropriate permanent plan for the child.
        B. Prospective guardianship placement, if known, is appropriate.

2. After SPMs recommend Chapter 13.36 RCW guardianship to be the primary permanent plan:
    a. If there is not an agreement, consult with their supervisor and AAG or local prosecuting attorney before filing a Chapter 13.36 RCW guardianship petition.
    b. If there is agreement with establishing Chapter 13.36 RCW guardianship:
        i. Coordinate with known tribes, as outlined in the Active Efforts and Tribal Collaboration policy, and:
            i. Discuss with tribes, recommendations for guardianship.
            ii. Obtain a letter from tribes, if possible, verifying the proposed guardian is considered the child's relative based on tribal code or custom.
            iii. Discuss a cultural plan with tribes, where appropriate.
            iv. Determine if the child is eligible for the Guardianship Assistance Program (GAP) subsidy, as outlined in the Child Welfare Relative GAP policy.
        ii. File a Chapter 13.36 RCW guardianship petition, as outlined in the Child Welfare Guardianship policy and include:
            A. The reason to know the child is or may be an Indian child.
            B. Tribal affiliations of the child and their parents or Indian custodians, if known.
            C. The residence or domicile of the child and their parents or Indian custodians.
            D. A detailed description of:
                I. Active efforts made to prevent the break-up of the Indian family.
                II. How continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
        iii. Collaborate with the assistant attorney general to:
            A. Identify a qualified expert witness (QEW), as outlined in the Chapter 19. QEW policy
            B. Verify they have the following information:
                I. Names of the QEW who testified at the dependency fact-finding/disposition hearing.
                II. Efforts to identify a QEW for the Chapter 13.36 RCW guardianship proceeding.
                III. The name and contact information of the QEW identified for the Chapter 13.36 RCW guardianship proceeding, if identified.
            C. Verify:
                I. A copy of the Indian Child Welfare Act Notice (BIAN) JU 03.0900 form in the guardianship case was sent to:
                    i. All known tribes and filed with the court, as outlined in ICWA Notice to Tribes policy.
                    ii. The Bureau of Indian Affairs by certified mail, return receipt requested and filed with the court.
                II. Tribes participating in the court hearings received discovery, as outlined in Providing Confidential Records to Tribes policy.

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D. File the:
    I. Indian Child Welfare Act Notice (BIAN) JU 03.0900 form
    II. Forms identified in the Child Welfare Guardianships policy.

iv. Follow the Child Welfare Guardianships policy when providing disclosure to the guardians.

3. If a Chapter 11.130 RCW guardianship of a minor is being completed, follow the Child Welfare Guardianships policy.
4. GAP
    a. Follow the Child Welfare GAP policy when children and guardians meet GAP requirements.
    b. Contact GAP gatekeepers for assistance to complete GAP negotiations, if the child is eligible.
5. Follow the Child Welfare Documentation policy and document all ICW related communications and activities.

Forms

Indian Child Welfare Act Notice (BIAN) JU 03.0900

Resources

25 CFR Part 23 – Indian Child Welfare Act
Child Welfare Documentation policy
Child Welfare Guardianship policy
Child Welfare Guardianship Assistance Program (GAP) policy
Indian Child Welfare Act (ICWA) Notice to Tribes policy
Active Efforts and Tribal Collaboration policy
Qualified Expert Witness policy
Providing Confidential Records to Tribes policy
Transferring Cases to Tribal Court policy
FamLink Placement-Temporary Situation Quick Help Guide (located on the CA Knowledge Web)
FamLink Placement Correction Quick Help Guide (located on the CA Knowledge Web)
Permanency Planning Matrix DCYF CWP_0088 publication
Washington State Tribal Indian Child Welfare Social Services Directors and Staff Contact Information
Washington State Intake Referral and After-Hours Tribal Staff Contact Information

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