



February 28, 2023

Family, Children and Adult Services Manual Transmittal Letter No. 516

TO: Family, Children and Adult Services Manual Holders

FROM: Matt Damschroder, Director

**SUBJECT: Five Year Review of Indian Child Welfare Act (ICWA) Ohio
Administrative Code Rules in Chapter 5101:2-53**

This letter transmits nine rules regarding the Indian Child Welfare Act (ICWA) that have been reviewed as required by the five-year review process. These rules will become effective 03/15/2023. The following is a brief explanation of the changes:

OAC 5101:2-53-01 entitled **Definitions Related to the Indian Child Welfare Act** provides definitions of terms used in rules implementing the Indian Child Welfare Act. No changes have been made to this rule.

OAC 5101:2-53-02 entitled **General Provisions of the Indian Child Welfare Act (ICWA)** provides information regarding when ICWA requirements apply to child custody proceedings and when they do not apply. No changes have been made to this rule.

OAC 5101:2-53-03 entitled **Determination of Indian Status, Tribal Eligibility and Membership** describes provisions for determining a child's status as an Indian child. No changes have been made to this rule.

OAC 5101:2-53-04 entitled **Indian Child Welfare Act (ICWA) Notice Requirements** outlines requirements for notifying an Indian child's parents or Indian custodian, the Indian child's Tribe, and the Bureau of Indian Affairs (BIA) regarding a child custody proceeding involving the Indian child. This rule has been revised to update the mailing address for the Midwest Regional Office of the BIA.

OAC 5101:2-53-05 entitled **Voluntary Agreement for Temporary Custody of Indian Child** describes the responsibilities of a public children services agency (PCSA) or a private child placing agency (PCPA) when executing an agreement for temporary custody of an Indian child. The revision date for the JFS 01645 "Agreement for Temporary Custody of Child" has been removed.

OAC 5101:2-53-06 entitled **Emergency Removal and Involuntary Custody of Indian Children** describes the responsibilities of PCSAs and PCPAs when an Indian child is in

the agency's custody. This rule has been revised to update the mailing address for the Midwest Regional Office of the BIA.

OAC 5101:2-53-07 entitled **Permanent Surrender or Parental Consent to Adoptive Placement of Indian Children** describes the responsibilities of PCSAs and PCPAs when an Indian child has been permanently surrendered for adoption by the parent or the Indian custodian. The revision date for the JFS 01666 “Permanent Surrender of Child” has been removed.

OAC 5101:2-53-08 entitled **Placement Preference of Indian Children** describes the requirements of PCSAs and PCPAs for adhering to placement preferences when selecting a placement setting for an Indian child. No changes have been made to this rule.

OAC 5101:2-53-09 entitled **Procedures for the Transfer of Indian Children to a Tribal Court, a Tribal Title IV-E Agency or an Indian Tribe with a Title IV-E Agreement** identifies requirements for transferring child custody proceedings to a Tribal court, a Tribal Title IV-E agency, or an Indian Tribe with a Title IV-E agreement. Review dates for the JFS 01661 “Interstate Compact Placement Request (ICPC 100A)” and the JFS 01662 “Interstate Compact Report on Child’s Placement Status (ICPC 100B)” have been removed.

INSTRUCTIONS:

The following chart depicts what materials should be deleted from the Family, Children and Adult Services Manual (FCASM) and what materials are to be inserted in the FCASM.

LOCATION	REMOVE AND FILE AS OBSOLETE	INSERT/REPLACEMENT
Social Services	OAC 5101:2-53-01 OAC 5101:2-53-02 OAC 5101:2-53-03 OAC 5101:2-53-04 OAC 5101:2-53-05 OAC 5101:2-53-06 OAC 5101:2-53-07 OAC 5101:2-53-08 OAC 5101:2-53-09	OAC 5101:2-53-01 OAC 5101:2-53-02 OAC 5101:2-53-03 OAC 5101:2-53-04 OAC 5101:2-53-05 OAC 5101:2-53-06 OAC 5101:2-53-07 OAC 5101:2-53-08 OAC 5101:2-53-09
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5101:2-53-04

Indian Child Welfare Act (ICWA) notice requirements.

- (A) When a public children services agency (PCSA) or private child placing agency (PCPA) knows or has reason to know that an Indian child is the subject of an involuntary foster care placement or termination of parental rights proceeding, the agency shall send notice of each proceeding to:
- (1) Each tribe where the child is or may be a member, or eligible for membership if a biological parent is a member;
 - (2) The child's parents; and
 - (3) The child's Indian custodian, if applicable.
- (B) If the identity or location of the child's parents, the child's Indian custodian, or the tribes in which the Indian child is a member or eligible for membership cannot be determined, but there is reason to know the child is an Indian child, the agency shall send the notice to the regional office of the bureau of Indian affairs (BIA) that is identified in paragraph (E) of this rule.
- (C) The agency shall send the notice by registered or certified mail with return receipt requested. The agency may also send the notice via personal service or electronically. Such alternative methods do not replace the requirement for notice to be sent by registered or certified mail with return receipt requested.
- (D) The notice shall be in clear understandable language and include the following:
- (1) The child's name, birthdate, and birthplace;
 - (2) All known names (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and tribal enrollment numbers, if known;
 - (3) The names, birthdates, birthplaces, and tribal enrollment information of other direct lineal ancestors of the child, such as grandparents, if known;
 - (4) The name of each Indian tribe in which the child is a member, or may be eligible for membership if a biological parent is a member;
 - (5) A copy of the petition, complaint, or other document by which the child custody proceeding was initiated and, if a hearing has been scheduled, the date, time, and location of the hearing;
 - (6) Statements setting out the following:

- (a) The name of the petitioner and the name and address of the petitioner's attorney;
 - (b) The right of any parent or Indian custodian of the child, if not already a party to the child custody proceeding, to intervene in the proceedings;
 - (c) The Indian tribe's right to intervene at any time in a state court proceeding for the foster care placement of or termination of parental rights to an Indian child;
 - (d) That, if the child's parent or Indian custodian is unable to afford counsel based on a determination of indigency by the court, the parent or Indian custodian has the right to court-appointed counsel;
 - (e) The right to be granted, upon request, up to twenty additional days to prepare for the child custody proceedings;
 - (f) The right of the parent or Indian custodian and the Indian child's tribe to petition the court for transfer of the foster care placement or termination of parental rights proceeding to tribal court as provided by 25 U.S.C. 1911 (1978);
 - (g) The mailing addresses and telephone numbers of the court and information related to all parties to the child custody proceeding and individuals notified in accordance with this rule.
 - (h) The potential legal consequences of the child custody proceedings on the future parental and custodial rights of the parent or Indian custodian; and
 - (i) That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA.
- (E) The agency shall send a copy of the notice described in paragraph (D) of this rule to the regional office of the BIA at the following address: "Minneapolis Regional Director, Bureau of Indian Affairs, ~~331 Second Avenue South, Minneapolis, Minnesota 55401-2241~~ 5600 American Blvd. W, Ste. 500, Bloomington, MN 55437." The copy of the notice shall be sent by registered or certified mail with return receipt requested, or by personal delivery.
- (F) If the agency does not have accurate contact information for a tribe, or the tribe contacted fails to respond to written inquiries, the agency should seek assistance in contacting the Indian tribe from the regional office of the BIA that is identified in paragraph (E) of this rule or the BIA's central office in Washington DC.

(G) If there is a reason to know that a parent or Indian custodian possesses limited English proficiency and is not likely to understand the contents of the notice, the agency shall provide language access services as required by Title VI of the Civil Rights Act (1964). The agency may contact or direct a party to contact the Indian child's tribe or the regional BIA office for assistance in locating and obtaining the name of a qualified translator or interpreter.

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Five Year Review (FYR) Dates: 11/30/2022 and 03/15/2028

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Certification

02/24/2023

Date

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Rule Amplifies: 5103.03, 5153.16
Prior Effective Dates: 02/01/2018

5101:2-53-05

Voluntary agreement for temporary custody of Indian child.

- (A) A public children services agency (PCSA) or private child placing agency (PCPA) may accept a voluntary 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. The agreement shall:
- (1) Be executed upon a completed JFS 01645 "Agreement for Temporary Custody of Child" ~~(rev. 4/2006)~~;
 - (2) Be recorded before a juvenile court, or a tribal court, if jurisdiction has been transferred there; and
 - (3) Include the tribal enrollment number for the parent and for the Indian child, when known, or some other indication of the child's membership in the tribe; the name and address of the person or entity who arranged the placement; the name and address of the prospective foster parents, if known at the time; and any conditions to the agreement.
- (B) Where confidentiality is requested or indicated, execution of the agreement shall be made before a court of competent jurisdiction, but is not required to be made in a session of court open to the public.
- (C) The agency shall submit a notification of the voluntary agreement to the tribe's designated agent or tribal court pursuant to rule 5101:2-53-03 of the Administrative Code. The tribe retains the right to participate as an interested party or to intervene at any point, even if the tribe has declined to be involved.
- (D) An agency shall abide by the agreement for temporary custody requirements set forth in rules 5101:2-42-06, 5101:2-42-07 and 5101:2-42-08 of the Administrative Code, and shall 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 agreement entered into 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 were fully explained in detail prior to the agency accepting the agreement. 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 made of BIA for assistance in locating and obtaining the name of a qualified translator or interpreter. 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 Indian custodian 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 Indian custodian is immediately and temporarily unable to fulfill his or her parental responsibilities and this inability will be alleviated with short-term placement.
- (E) Any parent or Indian custodian may request the termination of the voluntary agreement under law for any reason at any time, orally or by written notification and, upon such request, the child shall be returned to the parent or Indian custodian as soon as practicable.
- (F) If a parent or Indian custodian requests 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.
- (G) If anything in this rule conflicts with the requirements in Chapter 5101:2-42 of the Administrative Code, the agency shall follow the requirements outlined in this rule, or whichever rule favors the tribe.

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5101:2-53-06

Emergency removal and 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 whether the child may be an Indian child. In such cases where the circumstances during the removal are not favorable to identify or inquire if a child is an Indian child, 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 (B) of rule 5101:2-53-03 of the Administrative Code.
- (C) Any emergency removal or placement of an Indian child shall terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.
- (D) A petition for a court order authorizing the emergency removal or continued emergency placement should contain a statement of the risk of imminent physical damage or harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent such imminent physical damage or harm to the child. The petition or its accompanying documents should also contain the following information:
- (1) The name, age, and last known address of the Indian child;
 - (2) The name and address of the child's parents and Indian custodians, if any;
 - (3) The steps taken to provide notice to the child's parents, custodians, and tribe about the emergency proceeding;
 - (4) If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the the regional office of the bureau of Indian affairs (BIA) at the following address: "Minneapolis Regional Director, Bureau of Indian Affairs, 331 Second Avenue South, Minneapolis, Minnesota 55401-2241 American Blvd. W, Ste. 500, Bloomington, MN 55437";
 - (5) The residence and the domicile of the Indian child;

- (6) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska native village, the name of the tribe affiliated with that reservation or village;
 - (7) The tribal affiliation of the child and of the parents or Indian custodians;
 - (8) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;
 - (9) If the child is believed to reside or be domiciled on a reservation where the tribe exercises exclusive jurisdiction over child custody matters, a statement of efforts that have been made and are being made to contact the tribe and transfer the child to the tribe's jurisdiction; and
 - (10) A statement of the efforts that have been taken to assist the parents or Indian custodians so the Indian child may safely be returned to their custody.
- (E) An emergency proceeding regarding an Indian child should not be continued for more than thirty days unless the court makes the following determinations:
- (1) Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;
 - (2) The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian tribe; and
 - (3) It has not been possible to initiate a child custody proceeding.
- (F) Prior to an involuntary custody court proceeding, the 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.
- (G) In any involuntary proceeding where the agency knows or has reason to know that the child subject to the proceeding is an Indian child, the agency shall adhere to the notice requirements outlined in rule 5101:2-53-04 of the Administrative Code. The agency shall file with the court a copy of the notice and any return receipts or other proof of service.
- (H) No foster care placement or termination of parental rights proceeding may be held until at least ten days after receipt of the notice by the parent or Indian custodian and by the tribe or the director of the BIA regional office in Minneapolis. The parent, Indian custodian, and tribe each have a right, upon request, to be granted up to

twenty additional days from the date upon which notice was received to prepare for participation in the proceeding.

- (I) Except as provided in paragraph (A) of this rule, no foster-care or termination of parental rights proceeding may be held until the waiting periods to which the parents or Indian custodians and to which the Indian child's tribe are entitled have expired in accordance with the following:
- (1) Ten days after each parent or Indian custodian, or the director of the BIA regional office in Minneapolis where the parent or Indian custodian is unknown, has received notice of that particular child custody proceeding in accordance with rule 5101:2-53-04 of the Administrative Code.
 - (2) Ten days after the Indian child's tribe, or the director of the BIA regional office in Minneapolis if the Indian child's tribe is unknown, has received notice of that particular child custody proceeding in accordance with rule 5101:2-53-04 of the Administrative Code.
 - (3) Up to thirty days after the parent or Indian custodian has received notice of that particular child custody proceeding in accordance with rule 5101:2-53-04 of the Administrative Code, if the parent or Indian custodian has requested up to twenty additional days to prepare for the proceeding.
 - (4) Up to thirty days after the Indian child's tribe has received notice of that particular child custody proceeding in accordance with rule 5101:2-53-04 of the Administrative Code, if the Indian child's tribe has requested up to twenty additional days to prepare for the proceeding.
 - (5) Additional time beyond the minimum required by this rule may also be available pursuant to extensions granted by the court.
- (J) 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.
- (K) If the agency recommends foster placement, an affidavit shall be submitted to the court containing all of the following information:
- (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 prevent the need for placement, and an explanation of why these services were unsuccessful in maintaining the child in the home.

- (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.
 - (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.
 - (4) Clear and convincing evidence, including testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child custody proceeding. Without such a causal relationship, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence.
- (L) 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.
 - (3) A statement of family changes needed to correct the problems necessitating intervention, with timetables for accomplishing them.
 - (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.
 - (5) A description of services to be provided to ensure the child's ongoing connection to his or her culture while placed outside of his/her family, including attendance at significant cultural events.

- (6) A description of actions to be taken by the parents or Indian custodian to correct the identified problems, and of the parents' compliance with the case plan thus far.
 - (7) 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.
- (M) If the agency petitions the court for termination of parental rights, the agency shall include the following information in the petition:
- (1) Evidence beyond a reasonable doubt, including testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The evidence must show a causal relationship between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child custody proceeding. Without such a causal relationship, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence.
 - (2) The description of circumstances supporting the grounds for termination.
 - (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) 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.
 - (5) An explanation of why the child cannot be protected from the identified problems in the home.
 - (6) A summary of the tribe's position regarding the permanency plan, including any attachments or supporting documents sent by the tribe to the agency.
 - (7) An explanation of the efforts completed pursuant to rule 5101:2-53-08 of the Administrative Code.
 - (8) A description of arrangements made by the agency to ensure visitation and all efforts made to maintain the child's cultural connections.

- (9) A permanency plan for the child.
- (N) Each party to an emergency proceeding or a foster care placement or termination of parental rights proceeding under state law involving an Indian child has a right to timely examine all reports and other documents filed or lodged with the court upon which any decision with respect to such action may be based.
- (O) Upon the agency's determination that there are compelling reasons not to pursue termination of parental rights or reunification for children ages sixteen or older, the agency shall petition the court for a planned permanent living arrangement disposition in accordance with rule 5101:2-42-68 of the Administrative Code. The planned permanent living arrangement 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) An explanation of why the child cannot be moved to a placement that meets the preferences established 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.
 - (9) Documentation that the requirements in paragraph (D)(3) of rule 5101:2-42-68 of the Administrative Code have been met.

- (P) If, in the course of any child custody proceeding, any party asserts or the court has reason to believe that the Indian child may have been improperly removed from the custody of his or her parent or Indian custodian, the court will expeditiously determine whether there was improper removal. If the court finds that the Indian child was improperly removed, the court will terminate the proceeding and the child shall be returned immediately to his or her parent or Indian custodian, unless returning the child to his or her parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger.
- (Q) Any of the following may petition the court to invalidate an action for foster care placement or termination of parental rights under state law where it is alleged that 25 U.S.C. 1911 (1978), 25 U.S.C. 1912 (1978), or 25 U.S.C. 1913 (1978) has been violated:
- (1) An Indian child who is or was the subject of any action for foster care placement or termination of parental rights;
 - (2) A parent or Indian custodian from whose custody such child was removed; and
 - (3) The Indian child's tribe.
- (R) Upon a showing that an action for foster-care placement or termination of parental rights violated any provision of 25 U.S.C. 1911, 25 U.S.C. 1912, or 25 U.S.C. 1913, the court will determine whether it is appropriate to invalidate the action.
- (S) To petition for invalidation of an action for foster-care placement or termination of parental rights, there is no requirement that the petitioner's rights under the Indian Child Welfare Act (ICWA) (1978) were violated; rather, a petitioner may challenge the action based on any violations of 25 U.S.C. 1911, 25 U.S.C. 1912, or 25 U.S.C. 1913 during the course of the child custody proceeding.

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5101:2-53-07

Permanent surrender or parental consent to adoptive placement of Indian children.

- (A) A public children services agency (PCSA) or private child placing agency (PCPA) may accept a permanent surrender of an Indian child by a parent or Indian custodian. The surrender shall be executed on a JFS 01666 "Permanent Surrender of Child" (~~rev. 10/2013~~) and recorded before a juvenile court, or a tribal court if jurisdiction has been transferred there.
- (B) The agency shall act in accordance with the permanent surrender requirements set forth in rule 5101:2-42-09 of the Administrative Code with the exception that a permanent surrender for an Indian child cannot be executed until at least ten days after his or her birth.
- (C) The agency shall provide notification of all juvenile court proceedings affecting their tribal member to the tribe's designated agent or tribal court 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 proceedings.
- (D) The agency shall recognize and adhere to the following rights of parents of Indian children relative to the withdrawal of permanent surrender or parental consent to adoptive placements:
- (1) A parent or Indian custodian may withdraw a permanent surrender or consent to adoption for any reason, at any time prior to the entry of the final decree of adoption. To withdraw the permanent surrender or consent, the parent or Indian custodian must file a written document with the court or otherwise testify before the court. Upon such withdrawal, the Indian child shall be returned to his or her parent or Indian custodian as soon as practicable.
 - (2) Within two years after the entry of a final decree of adoption, the parent or Indian custodian may withdraw consent to adoption if the parent or Indian custodian can prove parental consent was obtained through fraud or duress. Upon court order to vacate the final decree of adoption, the Indian child shall be returned to the parent or Indian custodian.
- (E) If the agency has reason to believe that the parent or Indian custodian will not understand the permanent surrender because of possible limited English proficiency, a copy of the JFS 01666 form shall be sent to the bureau of Indian affairs (BIA) area office nearest to the residence of that person, and a request shall be made of BIA to arrange for translation in the language that the parent or Indian custodian best understands.
- (F) Upon application by an Indian who has reached age eighteen who was the subject of an adoptive placement, the agency that facilitated the adoption shall inform the

individual of the tribal affiliations, if any, of the individuals' biological parents and provide such other information necessary to protect any rights, which may include tribal membership, resulting from the individual's tribal relationship.

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5101:2-53-09

Procedures for the transfer of Indian children to a tribal court, a tribal Title IV-E agency or an Indian tribe with a Title IV-E agreement.

- (A) Either parent, the Indian custodian, or the Indian child's tribe may request, at any time, orally on the record or in writing, that the court transfer a foster care or termination of parental rights proceeding to the jurisdiction of the child's tribe. The right to request a transfer is available at any stage in each foster care or termination of parental rights proceeding.
- (B) Upon receipt of a transfer petition, the court must promptly notify the tribal court in writing of the transfer petition and may request a timely response regarding whether the tribal court wishes to decline the transfer. The court must transfer the child custody proceeding unless it determines that transfer is not appropriate because one or more of the following criteria are met:
- (1) Either parent objects to the transfer;
 - (2) The tribal court declines the transfer; or
 - (3) Good cause exists for denying the transfer.
- (C) If the public children services agency (PCSA) or private child placing agency (PCPA) asserts that good cause exists for the court to deny transfer, the agency shall state the reasons orally on the record or provide them in writing on the record and to the parties to the child custody proceeding. In determining whether good cause to deny transfer exists, the court must not consider:
- (1) Whether the foster care or termination of parental rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or tribe did not receive notice of the child custody proceeding until an advanced stage;
 - (2) Whether there have been prior proceedings involving the child for which no petition to transfer was filed;
 - (3) Whether transfer could affect the placement of the child;
 - (4) The Indian child's cultural connections with the tribe or its reservation; or
 - (5) Socioeconomic conditions or any negative perception of tribal or bureau of Indian affairs (BIA) social services or judicial systems.
- (D) If the tribal court accepts the transfer, the state court will expeditiously provide the tribal court with all records related to the proceeding. The agency shall work with the state court and the tribal court to ensure that the transfer of the custody of the Indian

child and of the proceeding is accomplished smoothly and in a way that minimizes the disruption of services to the family.

- (E) In order to ensure a Title IV-E eligible child remains eligible when transferring jurisdiction to a tribal court, the tribe must be a tribal Title IV-E agency or enter into a Title IV-E agreement with the PCSA. The tribe may request:
- (1) Transfer of jurisdiction to a tribal court. If the jurisdiction is transferred to the tribal court, the tribe assumes transfer of placement and care responsibility.
 - (2) Transfer of placement and care responsibility to a tribe. The tribe may assume placement and care responsibility of an Indian child, while the jurisdiction remains with the county court.
- (F) Upon a tribe's request for the transfer of jurisdiction or the transfer of placement and care responsibility to the tribe, the PCSA shall consult, collaborate, and coordinate with the tribe to establish a Title IV-E agreement and procedures to ensure the transfer of jurisdiction is in compliance with federal regulations as outlined in 45 C.F.R. 1356.67 (2012).
- (G) The PCSA that has placement and care responsibilities for the child shall:
- (1) Determine foster care maintenance eligibility at the time of transfer, if an eligibility determination is not already completed.
 - (2) Provide a copy of the Title IV-E determination and supporting documentation to the tribe to support the Title IV-E determination. This documentation includes:
 - (a) All judicial determinations to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child in accordance with rule 5101:2-47-13 of the Administrative Code;
 - (b) Reasonable efforts that have been made to prevent the removal in accordance with rule 5101:2-47-22 of the Administrative Code;
 - (c) Documentation of how the child met the relatedness to the aid to dependent children (ADC) program authorized under Title IV-A of the Social Security Act as of July 16, 1996 in accordance with rule 5101:2-47-14 of the Administrative Code.
- (H) In order to facilitate consistency in the structure of the file transfer and for purposes of the continuity of eligibility and services to the child, the PCSA shall ensure the records are organized and include the following:

- (1) A file stamped copy of all judicial orders and court reports for the foster care episode, especially those orders that include judicial determinations supporting continued Title IV-E eligibility.
 - (2) A copy of the child's placement history for the foster care episode, which shall include:
 - (a) A copy of the initial complaint;
 - (b) A copy of the caregiver's license or approval for the child's most recent placement, including background check documentation verifying clearances for all adults in the caregiver's household; and
 - (c) If a child is currently placed out-of-state by the PCSA pursuant to the Interstate Compact on the Placement of Children (ICPC), the approved JFS 01661 "Interstate Compact Placement Request (ICPC 100A)" (~~rev. 7/2016~~) and JFS 01662 "Interstate Compact Report on Child's Placement Status (ICPC 100B)" (~~rev. 7/2016~~), or equivalent forms, including copies of reports by the supervising agency.
 - (3) Journalized copies of all case plans including case plan goals for the foster care episode and documentation of services provided to the child and family.
 - (4) A current copy of the child's health and education forms.
 - (5) Other federal benefit documentation including information about the child's eligibility for medicaid, child support, social security, supplemental security income (SSI), or other benefits, which are known to the PCSA and/or are in pending status.
- (I) When a child is placed under the ICPC, upon receipt of the petition to transfer, the PCSA shall notify the receiving state that the jurisdiction over the child may be transferred to a Title IV-E tribe or tribal agency. PCSAs are encouraged to initiate and foster communication between the tribe or tribal agency and the receiving state in order to avoid disruption of the placement and/or federal eligibility for foster care maintenance payments to the child's caregivers.

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5101:2-53-01

Definitions related to the Indian Child Welfare Act (ICWA).

- (A) "Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child custody proceeding, active efforts involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts shall be tailored to the facts and circumstances of the case and may include, for example:
- (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
 - (2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
 - (3) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;
 - (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;
 - (5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's tribe;
 - (6) Taking steps to keep siblings together whenever possible;
 - (7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
 - (8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting

the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;

- (9) Monitoring progress and participation in services;
 - (10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available; and
 - (11) Providing post-reunification services and monitoring.
- (B) "Agency" means a nonprofit, for-profit, or governmental organization and its employees, agents, or officials that performs, or provides services to biological parents, foster parents, or adoptive parents to assist in the administrative and social work necessary for foster, preadoptive, or adoptive placements.
- (C) "Child custody proceeding" means and includes the following:
- (1) Any action, other than an emergency proceeding, that may culminate in one of the following outcomes:
 - (a) Foster care placement, which is any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
 - (b) Termination of parental rights, which is any action resulting in the termination of the parent-child relationship;
 - (c) Preadoptive placement, which is the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; or
 - (d) Adoptive placement, which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.
 - (2) A status offense proceeding that results in a child being placed into foster care or another out-of-home placement.
- (D) "Continued custody" means physical custody, legal custody or both, under any applicable tribal law, tribal custom or state law, that a parent or Indian custodian already has or had at any point in the past.

- (E) "Custody" means physical custody, legal custody or both, under any applicable tribal law, tribal custom or state law. A party may demonstrate the existence of custody by looking to tribal law or tribal custom or state law.
- (F) "Domicile" means:
- (1) For a parent or Indian custodian, 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.
 - (2) 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.
- (G) "Emergency proceeding" means and includes any court action that involves an emergency removal or emergency placement of an Indian child.
- (H) "Extended family member" is defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, is a person who has reached age eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent.
- (I) "Indian" means any person who is a member of an Indian tribe, or who is an Alaskan native who is a member of a regional corporation as defined by the Alaska Native Claims Settlement Act, 43 U.S.C. 1606 (2008).
- (J) "Indian child" means any unmarried person under age eighteen and either:
- (1) Is a member or citizen of an Indian tribe; or
 - (2) Is eligible for tribal membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe, or an Alaskan native who is a member of a regional corporation as defined by the Alaska Native Claims Settlement Act.
- (K) "Indian child's tribe" means:
- (1) The Indian tribe in which an Indian child is a member or eligible for membership;
or
 - (2) In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe described in 25 C.F.R 23.109 (2016).

- (L) "Indian custodian" means any Indian who has legal custody of an Indian child under applicable tribal law or custom or under applicable state law, or to whom temporary physical care, custody, or control has been transferred by the parent of the child.
- (M) "Indian foster home" means a foster home where one or more of the licensed or approved foster parents is an "Indian" as defined in 25 U.S.C. 1903(3) (1978).
- (N) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians or a tribe, or a majority of whose members are Indians.
- (O) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians federally recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska native village as defined in section 3(c) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(c) (2000).
- (P) "Involuntary proceeding" means a child custody proceeding in which the parent does not consent of his or her free will to the foster care, preadoptive, or adoptive placement or termination of parental rights or in which the parent consents to the foster care, preadoptive, or adoptive placement under threat of removal of the child by a state court or agency.
- (Q) "Parent or parents" means any biological parent or parents of an Indian child, or any Indian who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include an unwed biological father where paternity has not been acknowledged or established.
- (R) "Qualified expert witness" means a person who is qualified 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. The agency may request the assistance of the Indian child's tribe or the bureau of Indian affairs (BIA) office serving the Indian child's tribe in locating persons qualified to serve as expert witnesses. The social worker regularly assigned to the Indian child shall not serve as a qualified expert witness in child custody proceedings concerning the child.
- (S) "Reservation" means Indian country as defined in 18 U.S.C. 1151 (1949) and any lands, not covered under that section, title to which is held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the U.S. against alienation.

- (T) "Secretary" means the secretary of the interior or the secretary's authorized representative acting under delegated authority.
- (U) "State court of competent jurisdiction" means an Ohio juvenile court.
- (V) "Status offenses" mean offenses that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person's status as a minor.
- (W) "Tribal court" means a court with jurisdiction over child custody proceedings and which is either a court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe vested with authority over child custody proceedings.
- (X) "Tribal government" means the federally recognized governing body of an Indian tribe.
- (Y) "Upon demand" means that the parent or Indian custodian can regain custody simply upon verbal request, without any formalities or contingencies.
- (Z) "Voluntary proceeding" means a child custody proceeding that is not an involuntary proceeding, such as a proceeding for foster care, preadoptive, or adoptive placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a state agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

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General provisions of the Indian child welfare act (ICWA).

- (A) The public children services agency (PCSA) or the private child placing agency (PCPA) shall follow all of the Indian child welfare rules and guidelines as outlined by the Indian Child Welfare Act (ICWA)(1978) 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 ICWA.
- (B) The requirements of ICWA apply when a child is:
- (1) Determined to be an Indian child in accordance with rule 5101:2-53-03 of the Administrative Code; and
 - (2) The subject of:
 - (a) A child custody proceeding, including:
 - (i) An involuntary proceeding;
 - (ii) A voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody of the child upon demand;
 - (iii) A proceeding involving status offenses if any part of the proceeding results in the need for out-of-home placement of the child, including a foster care, preadoptive, or adoptive placement, or termination of parental rights.
 - (b) An emergency proceeding.
- (C) When determining whether the requirements of ICWA apply to a proceeding identified in paragraph (B) of this rule, the agency shall not consider factors such as the participation of the parents or the Indian child in tribal cultural, social, religious, or political activities, the relationship between the Indian child and his or her parents, whether the parent ever had custody of the child, or the Indian child's blood quantum.
- (D) If the requirements of ICWA apply at the commencement of a proceeding, they do not cease to apply simply because the child reaches eighteen years of age during the pendency of the proceeding.
- (E) ICWA requirements do not apply to:
- (1) A tribal court proceeding;
 - (2) A proceeding regarding a criminal act that is not a status offense;

- (3) An award of custody of the Indian child to one of the parents including, but not limited to, an award in a divorce proceeding; or
 - (4) A voluntary placement that either parent, or both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a state agency, chosen for the Indian child and that does not operate to prohibit the child's parent or Indian custodian from regaining custody of the child upon demand.
- (F) An agency has reason to know that a child is an Indian child if:
- (1) Any individual or agency relevant to the case informs the agency that the child is an Indian child or has discovered information indicating that the child is an Indian child;
 - (2) The child gives the agency reason to know he or she is an Indian child;
 - (3) The agency is informed that the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska native village;
 - (4) The agency is informed that the child is or has been a ward of a tribal court; or
 - (5) The agency is informed that either parent or the child possesses an identification card indicating membership in an Indian tribe.

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5101:2-53-03 **Determination of Indian status, tribal eligibility and membership.**

- (A) For each referral the agency screens in, the public children services agency (PCSA) or private child placing agency (PCPA) shall ask case participants whether the participant knows or has reason to know pursuant to rule 5101:2-53-02 of the Administrative Code that the child is an Indian child as defined in rule 5101:2-53-01 of the Administrative Code. The agency shall make this inquiry upon the initial face to face contact with the child or the child's parent, guardian or custodian.
- (B) If the child's parents, guardian or custodian are unavailable or unable to provide information regarding whether the child may be an Indian child, 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 may or may not be a member of an Indian tribe or the child may or may not be a member of or eligible for membership in an Indian tribe.
 - (2) An examination of any other information bearing on the determination of the child's status of membership or eligibility for membership in an Indian tribe, such as a review of all documentation in the file, including contact with previous caseworkers and communication from other sources, (e.g., Indian tribes and Indian organizations).
- (C) If there is reason to know that the child is an Indian child, but the agency does not have sufficient evidence to determine that the child is or is not an Indian child, the agency shall:
- (1) Use due diligence to identify and work with all of the tribes of which there is reason to know that the child may be a member or eligible for membership and to verify that the child is a member or a biological parent is a member and the child is eligible for membership; and
 - (2) Treat the child as an Indian child, unless and until it is determined that the child does not meet the definition of an Indian child.
- (D) If the agency is initiating court action for removal or custody of the child and information is obtained that suggests a child may be an Indian child but the tribe cannot be identified, the agency shall seek assistance in identifying and locating the tribe by sending the notice described in rule 5101:2-53-04 of the Administrative Code to the bureau of Indian affairs (BIA) as described in paragraph (E) of rule 5101:2-53-04 of the Administrative Code.

- (E) If the agency is initiating court action for removal or custody of the child and information is obtained that suggests a child is an Indian child 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 calendar days of the date the information was obtained; and
 - (2) Submit a request to each possible tribe for written verification from the tribe regarding the child's tribal membership or eligibility for tribal membership. The agency's inquiry to the tribe shall be sent by registered or certified mail with "return receipt requested". A list of federally recognized tribes which includes a contact person and address for each tribe is available on the BIA website at www.bia.gov. If the tribe does not respond to written inquiries, the caseworker shall seek assistance in contacting the Indian tribe from the BIA regional office in Minnesota or the BIA's central office in Washington D.C.
 - (3) Bring to the juvenile court's attention, if applicable, any documentation submitted by the tribe and the agency's efforts to verify whether the child is or is not an Indian child.
 - (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.
- (F) If the juvenile court takes action to verify whether the child is or is not an Indian child, the agency shall provide the court with assistance if so requested.
- (G) The agency shall assist the family in filing required documents if the family wishes to submit an application for the child to become a member of his or her tribe.

- (H) If the Indian child is a member or eligible for membership in only one tribe, that tribe shall be designated as the Indian child's tribe.
- (I) If the child meets the definition of "Indian child" through more than one tribe, deference should be given to the tribe in which the Indian child is already a member, unless otherwise agreed to by the tribes.
- (J) If a child meets the definition of "Indian child" through more than one tribe because the child is a member in more than one tribe or the child is not a member of but is eligible for membership in more than one tribe, the court must provide the opportunity in any involuntary child custody proceeding for the tribes to determine which should be designated as the Indian child's tribe.
- (1) If the tribes are able to reach an agreement, the agreed-upon tribe shall be designated as the Indian child's tribe.
 - (2) If the tribes are unable to reach an agreement, the court will designate, for the purposes of the Indian Child Welfare Act (ICWA), the Indian tribe with which the Indian child has the more significant contacts as the Indian child's tribe, taking into consideration the following:
 - (a) Preference of the parents for membership of the child;
 - (b) Length of past domicile or residence on or near the reservation of each tribe;
 - (c) Tribal membership of the child's custodial parent or Indian custodian;
 - (d) Interest asserted by each tribe in the child custody proceeding;
 - (e) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes; and
 - (f) Self-identification by the child, if the child is of sufficient age and capacity to meaningfully self-identify.
 - (3) A determination of the Indian child's tribe for the purposes of ICWA does not constitute a determination for any other purpose.
- (K) A child who is 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 shall 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 if the child is or is not an Indian child 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.

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5101:2-53-08

Placement preference of Indian children.

- (A) When the public children services agency (PCSA) or private child placing agency (PCPA) has custody of an Indian child, it shall select the least restrictive substitute care setting that:
- (1) Most approximates a family, taking into consideration sibling attachment;
 - (2) Allows the Indian child's special needs to be met; and
 - (3) Is in reasonable proximity to the Indian child's home, extended family, or siblings.
- (B) In any substitute or pre-adoptive placement of an Indian child where the Indian child's tribe has not established a different order of preference pursuant to paragraph (D) of this rule, the agency shall give preference in the following order to placement of the child with:
- (1) A member of the Indian child's extended family;
 - (2) A foster home that is 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; or
 - (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, the agency 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.
- (E) In any adoptive placement of an Indian child, where the Indian child's tribe has not established a different order of preference pursuant to paragraph (F) of this rule, placement preference shall be given in the following order to placement of the child with:
- (1) A member of the child's extended family;
 - (2) Other members of the Indian child's tribe;
 - (3) Other Indian families; or

- (4) Other non-Indian prospective adoptive families.
- (F) When the Indian child's tribe establishes a different order of preference by resolution for an adoptive placement, the agency shall abide by the tribe's order.
- (G) In any substitute, pre-adoptive, or adoptive placement, where appropriate, the agency shall also consider the preference of the Indian child or the Indian child's parent.
- (H) 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 one or both of the Indian child's parents upon their review of the placement options;
 - (2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
 - (3) The presence of a sibling attachment that can be maintained only through a particular placement;
 - (4) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live, as determined by a qualified expert witness;
 - (5) The unavailability of a suitable placement after a determination by the court that a diligent search has been conducted.
- (I) 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.
- (J) A placement of an Indian child shall not depart from the preferences based on:
 - (1) The socioeconomic status of any placement relative to another placement; or
 - (2) Ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of the Indian Child Welfare Act (ICWA) (1978).
- (K) The agency shall maintain a record of every voluntary or involuntary foster care, preadoptive, and adoptive placement of an Indian child and make the record available within fourteen days of a request by an Indian child's tribe or the secretary. The record

shall contain, at a minimum, the petition or complaint, all substantive orders entered in the child custody proceeding, the complete record of the placement determination, and if the placement departs from the placement preferences, detailed documentation of the efforts to comply with the placement preferences.

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