

Quick Reference Sheet for Tribes



U.S. Department of the Interior, Bureau of Indian Affairs
Final Rule: Indian Child Custody Proceedings
25 CFR 23

Identifying an “Indian child.” State agency personnel will be contacting you to verify whether a child is an “Indian child” under the Indian Child Welfare Act (ICWA). An “**Indian child**” is:

- A member of a federally recognized Tribe or
- Eligible for membership in a federally recognized Tribe and has a biological parent who is a member.

Verifying membership/eligibility. The Tribe is the authoritative source on whether a child is a member, or whether the parent is a member and the child is eligible for membership, and the rule directs the State court to defer to the Tribe as a source in determining whether the child is an Indian child for purposes of the child-custody proceeding. Your response is therefore an important step to ensuring ICWA’s protections apply.

Contact Information. The BIA final rule directs States to provide the notice and inquiry to the agent you designate for receipt of ICWA notices, as listed in the Federal Register and available on www.bia.gov.

The Indian child’s domicile and residence. The court will look at whether the Indian child’s domicile or residence is on a reservation where the Tribe exercises exclusive jurisdiction **or** whether the child is a ward of Tribal court. If either of these criteria is met, the Tribe has exclusive jurisdiction. For this reason, you may wish to notify State agency and court personnel, as early as possible, if you know either of these criteria is met.

Becoming designated as “the Indian child’s Tribe.” ICWA provides that only one Tribe may be designated as the Indian child’s Tribe for the purposes of an ICWA child custody proceeding, even if the child meets the definition of “Indian child” through multiple Tribes. You may agree with the other Tribes as to which should be designated as the Indian child’s Tribe and the court will designate the agreed-upon Tribe as the Indian child’s Tribe. Otherwise, the court will designate the Indian child’s Tribe under § 23.109(c).

A determination of the Indian child’s Tribe for purposes of ICWA does not constitute a determination for any other purpose.

Participation in active efforts. Tribes may participate in providing active efforts to prevent the breakup of the Indian family. The rule provides that, to the maximum extent possible, active efforts should be conducted in partnership with the Indian child’s Tribe (as well as the parents and others). Before ordering an involuntary foster care placement or termination of parental rights (TPR), the court must conclude that active efforts have been made to prevent the breakup of the Indian family and those efforts have been unsuccessful. The court will also require active efforts to be documented in detail in the record.

Examples of active efforts include:

- 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;
- 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.

Right to notice. The Indian child’s Tribe (and parents or Indian custodians) must receive clear and understandable notice, by registered or certified mail, return receipt requested, of an involuntary proceeding. The court will check to ensure there is proof that the notice was given and will not hold a foster-care-placement or TPR proceeding until at least **10 days after receipt** of the notice of that particular proceeding (with extensions allowed at option of parent or Tribe). The Indian child’s Tribe has the right to be granted, **upon request, up to 20 additional days** to prepare for the child-custody proceedings.

Right to transfer jurisdiction. The Indian child's Tribe (and parents or Indian custodians) may request a transfer of a foster-care or TPR proceeding to Tribal jurisdiction, at any stage and at any time, orally on the record or in writing. Upon such a request, the court **must** transfer unless:

- Either parent objects to such transfer;
- The Tribal court declines the transfer; or
- Good cause exists for denying the transfer.

The reasons for denying a request to transfer must be on the record.

A determination that good cause exists to deny transfer of jurisdiction may **not** include the considerations listed at § 23.118(c) regarding advanced stage, prior proceedings, potential placements, cultural connections, socioeconomic conditions, or negative perceptions of Tribal or BIA systems.

Right to intervene. The Indian child Tribe's has the right to intervene, at any time, in a State-court proceeding for the foster-care placement of or TPR to an Indian child.

Qualified expert witnesses. The court will order foster-care placement or TPR only if certain standards of evidence are met, including the testimony of qualified expert witness(es). You, as the Indian child's Tribe, may designate an individual as being qualified to testify to the prevailing social and cultural standards of the Indian child's Tribe. The court or any party may request your assistance in locating persons qualified to serve as expert witnesses

The qualified expert witness must be 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.

Placement preferences. Placement preferences apply in both voluntary and involuntary child custody proceedings. The Indian child's Tribe may establish, by resolution, an order of preference for placements that is different from the list in ICWA and which will then supersede the ICWA order of preference. Tribes may assist in identifying placements for the child. The court will allow for deviations of the placement preferences only for *good cause*. Good cause must be on the record, should be shown by clear and convincing evidence, and should be based the considerations listed at § 23.132(c)

Right to examine documents. The rule provides that 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. In addition, Tribes are sovereign entities that have concurrent jurisdiction over child-custody proceedings, and they should have the ability to review documents relevant to those proceedings. State agencies must share records with Tribal agencies that are parties to child-custody cases as they would other parties and governmental entities.

Right to request access accommodations. You have the right to request the court to allow alternative methods of participation in State-court child-custody proceedings involving an Indian child, such as participation by telephone, videoconferencing, or other methods.

Right to petition to invalidate an action. The Indian child's Tribe may petition any court of competent jurisdiction 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, 1912, or 1913 has been violated.

Right to obtain placement records. The Indian child's Tribe may require a State to provide the record for a voluntary or involuntary foster-care, preadoptive, and adoptive placement of an Indian child within 14 days of the request.