

The Laws, They are A'Changin- Changes to the Nebraska ICWA and BIA Regulations

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What is Nebraska Appleseed?

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What we do

We take a systemic approach to complex issues:

- Child welfare
- Affordable healthcare
- Immigration policy
- Poverty

We take our work wherever it does the most good – at the courthouse, at the statehouse, or in our community.



Roadmap

- Background on federal and state ICWA
- Procedural changes
- Substantive changes
- Technical questions and answers



My Background

- I do not self-identify as Native American.
- I have had the opportunity to work with and learn from tribal members and other community partners on ICWA issues.
- With many others, I was involved in the efforts to pass LB 566 in 2015.
- My focus and experience with ICWA is in the context of foster care cases.



Background on Federal ICWA

- The federal Indian Child Welfare Act (ICWA) was passed by Congress in 1978.
- Codified at 25 U.S.C. 1901-1963.
- Passed in response to concerns that Indian children were disproportionately removed from their homes and placed in non-Indian foster or adoptive homes and institutions.
 - At the time of ICWA's enactment, 25-35% of *all* Indian children had been removed from their Tribes and families and placed in adoptive homes; about 90% of those adoptions were in non-Indian homes. *Mississippi Choctaw Indian Band v. Holyfield*, 490 U.S. 30 (1989).
- Tribes feared for their survival.



The BIA Guidelines

- The BIA published guidelines for state courts on ICWA requirements in 1979.
- Located at 44 Fed. Reg. 67584 (Nov. 26 1979).
- The 1979 guidelines provided instruction on:
 - Whether the ICWA applies in a case
 - Notice to Tribes
 - Provisions for removal of an Indian child
 - Requests to transfer a case to tribal court
 - Placement preferences for Indian children
 - Requirements for the adjudication and termination stages of a case
- Nebraska Appellate courts have generally looked to the BIA guidelines in interpreting the *ICWA*. -*In re Interest of Zylena R.*, 284 Neb. 834 (2012).



New BIA Guidelines

- The BIA published new guidelines for state courts on ICWA requirements on February 25, 2015.
- Located at 80 Fed. Reg. 10146 (Feb. 25, 2015).
- The 2015 guidelines provide additional instruction on:
 - Active efforts
 - Custody of the child
 - Imminent physical damage or harm
 - Whether the ICWA applies in a case
 - Emergency removal practices
 - Transfer of jurisdiction to tribal court
 - Requirements for the adjudication and termination stages of a case
- The new BIA Guidelines immediately superseded and replaced the old BIA guidelines and also include guidance for human service or placing agencies.



New BIA Regulations

- The BIA published finalized regulations for state courts on ICWA requirements on June 8, 2016.
- Located at 25 CFR 23 (June 8, 2016).
- The 2016 Regulations focus on:
 - Applicability
 - Inquiry
 - Emergency Proceedings
 - Notice
 - Qualified Expert Witnesses
 - Placement Preferences
 - Voluntary Proceedings
- The new regulations go into effect on December 12, 2016, and unlike the former guidelines, are fully enforceable and are to be afforded *Chevron* deference.



The Nebraska Indian Child Welfare Act

- The Nebraska Legislature enacted the NICWA in 1985.
- Codified at Neb. Rev. Stat. § § 43-1501-1517.
- Similar provisions as the federal act.
- Neb. Rev. Stat. § 43-1502
 - Purpose of Act: The purpose of the Nebraska Indian Child Welfare Act is **to clarify state policies and procedures regarding the *implementation* by the State of Nebraska of the Federal Indian Child Welfare Act, 25 U.S.C. 1901 et seq.** It shall be the policy of the state to **cooperate fully with Indian Tribes** in Nebraska in order **to ensure that the intent and provisions of the Federal Indian Child Welfare Act are enforced.**



The Nebraska Indian Child Welfare Act in 2015

- The Nebraska Legislature enacted LB 566 in 2015.
- LB 566 modifies and clarifies key procedural and substantive provisions of the NICWA.
- Neb. Rev. Stat. § 43-1502
 - It shall be the policy of the state to cooperate fully with Indian Tribes in Nebraska in order to ensure that the intent and provisions of the federal Indian Child Welfare Act are enforced. **This cooperation includes recognition by the state that Indian Tribes have a continuing and compelling interest in an Indian child whether or not the Indian child is in the physical or legal custody of a parent, an Indian custodian, or an Indian extended family member at the commencement of an Indian child custody proceeding or the Indian child has resided or is domiciled on an Indian reservation. The state is committed to protecting the essential tribal relations and best interests of an Indian child by promoting practices consistent with the federal Indian Child Welfare Act and other applicable law designed to prevent the Indian child's voluntary or involuntary out-of-home placement.**



Tribal Presence

- Four Tribes have governmental headquarters within Nebraska's borders: the Omaha Tribe, the Ponca Tribe, the Santee Sioux Nation, and the Winnebago Tribe.
- Several Tribes have reservation land in Nebraska.
 - The **Omaha and Winnebago Tribes** have reservation land in **Thurston County**; the **Santee Sioux Nation** has reservation land in **Knox County**; and the **Ponca Tribe** has 12 counties that are designated as service areas by federal law.
 - In addition, the **Oglala Sioux Tribe's Pine Ridge Reservation** extends into **Sheridan County** and the **Sac and Fox Nation** and the **Iowa Tribe's** reservation lands each extend into **Richardson County**.
- In addition, many members of other Tribes reside in Nebraska, representing over 200 Tribes.



Procedural Changes

- Inquiry
- Legal Representation of Tribes
- Participation of Multiple Tribes
- Additional Notice Requirements



Inquiry: LB 566

- The court's Inquiry

- In any case where a petition alleges the child is within the meaning of Neb. Rev. Stat. § 43- 247(3)(a), or a petition to terminate parental rights is filed, the court must inquire as to whether any party believes an Indian child is involved in the proceedings.

- The Hotline's Inquiry

- The Child Abuse and Neglect Hotline operated by DHHS must inquire as to whether the individual calling believes an Indian child is involved in the intake. The hotline worker must immediately document the suspected involvement of an Indian child and report that information to his or her supervisor.

Neb. Rev. Stat. § 43-279.01(4); Neb. Rev. Stat. § 43-1514(2)



Inquiry: New BIA Regulations

- The court's Inquiry
 - The court is required to ask each party to the case whether the party knows or has reason to know that the child is an Indian child. This inquiry is made at the commencement of the proceeding and all responses should be on the record. The court must inform parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.
 - If there is reason to know that an Indian child is involved in the proceedings, but there is not definitive evidence available, the court must:
 - Confirm that the agency or other party used due diligence and worked with all of the Tribes to verify whether child's status; and
 - Treat the child as an Indian child until it is determined on the record that they are not.



Inquiry: New BIA Regulations

- A court is deemed to “reasonably know about the existence of an Indian child in a case if:
 - A party or officer of the court informs the court that the child is an Indian child;
 - A party or officer of the court informs the court that it has discovered information indicating the child is an Indian child;
 - The child gives the court reason to know they are an Indian child;
 - The court is informed that the child, parent, or Indian custodian resides or is domiciled on a reservation or Alaska Native village;
 - The court is informed that the child is or has been a ward of a Tribal court; or
 - The court is informed that either parent or the child possesses an I.D. indicating tribal membership.
- In seeking verification of the child’s status in voluntary proceedings, the court (and Tribe) must keep information relevant to the inquiry under seal.

25 CFR 23.107(c)—(d)



Legal Representation of Tribes: LB 566

- An Indian child's Tribe, or Tribes, have a right to intervene and fully participate in any "child custody proceeding."
- A Tribe is not required to be represented by legal counsel in order to intervene and participate in an ICWA case.
- A Tribe is not required to associate with local counsel or pay Pro Hac Vice fees in order to participate in an ICWA proceeding.
- *See also In re Interest of Elias L.*, 277. Neb. 1023 (2009) (concluding that a Tribe's right to intervene under the ICWA preempts Nebraska's laws regulating the unauthorized practice of law).

Neb. Rev. Stat. § 43-1504(3)



The Indian Child's Tribe

- The ICWA previously defined Indian child's Tribe as:
 - “the Indian Tribe 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**”

Neb. Rev. Stat. § 43-1503(5) (2014).



Multiple Tribes in a Case: LB 566

- LB 566 allows for the participation of multiple Tribes in a case and for one Tribe to be the Indian child's "Primary Tribe."
- An Indian child's primary Tribe takes precedence over other Tribes in issues of transfer, placement preferences, and in filing a petition to invalidate.
- The applicable Tribes get to choose which Tribe is the primary Tribe and if they cannot reach an agreement the court will select the primary Tribe based on the child's contacts with the Tribes.



Multiple Tribes in a Case: New BIA Regulations

- If the Indian child is a member or eligible for membership in only one Tribe, that Tribe must be designated as the Indian child's Tribe.
- If the Indian child meets the definition of Indian child through more than one Tribe, deference should be given to the Tribe in which the child is already a member, unless agreed to by the Tribes.
- If an Indian child meets the definition of Indian child through more than one Tribe and is a member in multiple or no Tribes, the court must provide the Tribes with the opportunity to determine which Tribe should be the Indian child's Tribe.
- If the Tribes cannot reach an agreement, the court determines the Tribe by determining which Tribe has more significant contacts with child by taking into consideration:
 - Parental preference;
 - Length of domicile on or near a reservation;
 - Tribal membership of custodial parent or Indian custodian;
 - Interest asserted by each Tribe;
 - Whether there was a previous adjudication of the child by one of the Tribes; and
 - Self-identification of a sufficiently mature child.



Notice

- The ICWA previously discussed notice as follows:
 - “In any involuntary proceeding in a state court, when the court knows or has reason to know that an Indian child is involved, **the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's Tribe, by certified or registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the Tribe cannot be determined, such notice shall be given to the secretary in like manner, who may provide the requisite notice to the parent or Indian custodian and the Tribe. No foster care placement or termination of parental rights proceedings shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the Tribe or the secretary.**”

Neb. Rev. Stat. § 43-1505 (2014).



Notice: LB 566

- LB 566 clarifies how the notice requirement is satisfied in ICWA cases by:
 - requiring that all notice be completed by registered mail with return receipt requested
 - requiring that a notice contain information additional to the requirements in [the former] 25 C.F.R. 23.11, including:
 - A statement indicating what attempts have been made to locate the names and last known addresses of the Indian child, parents, paternal and maternal grandparents, and Indian custodians, if the names and addresses cannot be located.
 - The tribal affiliation of the parents or Indian custodian
 - A statement about whether the child’s domicile is on a reservation
 - Identification of tribal court custody orders
- LB 566 requires that the notice must be filed with the court within three days of issuance.
- LB 566 requires that notice be sent in voluntary foster care cases.



Neb. Rev. Stat. § § 43-1505(1), 43-1505.01, and 43-1506(2)

Notice: New BIA Regulations

- When a court knows or has reason to know that an Indian child is involved in a case, the court must ensure:
 - The party seeking placement promptly sends notice by registered or certified mail to each Tribe in which the child may be eligible for membership, the child’s parents, and the Indian custodian.
 - The notice must be filed with the court with proof of service and include:
 - The child’s name, birthdate, and birthplace;
 - All known names of the parents, the parents birthdates and birthplaces, and Tribal enrollment numbers if known;
 - If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors;
 - The name of each Indian Tribe in which the child is a member (or may be eligible for membership
 - A copy of the petition and information about the forthcoming hearing if scheduled;

25 CFR 23.111



Notice: New BIA Regulations

- The notice must also set out:
 - The name and address of the petitioner and their attorney;
 - The right of the parent or Indian custodian to intervene;
 - The Tribe's right to intervene;
 - That the parent or Indian custodian is entitled to counsel;
 - The right to request an additional 20 days to prepare for the proceedings;
 - The right of the parent or Indian custodian and Tribe to petition for transfer;
 - The mailing addresses and phone numbers of the court and all parties;
 - The potential legal consequences of the court action;
 - That all parties must keep the information in the notice confidential
- If the identity of the parents, Indian custodian, or Tribe can't be ascertained than the notice must be sent to the BIA.
- If there is reason to know that the parent or Indian custodian has limited English proficiency the court must provide language access services.
- If the parent or Indian custodian appears in court without counsel, the court must inform them of their right to counsel, right to transfer the case, right to request additional time, and right to intervene (if not already a party).

25 CFR 23.111



Substantive Changes

- Best Interests
- Voluntary Foster Care Proceedings
- Active Efforts
- Placement Preferences
- Qualified Expert Witnesses (“QEW”)
- Emergency Foster Care Placement



Best Interests: LB 566

- LB 566 provides a definition of “Best Interests of the Indian Child” which includes:
 - Complying with the Federal Indian Child Welfare Act
 - Complying with the Nebraska Indian Child Welfare Act
 - Complying with other applicable laws designed to prevent the voluntary or involuntary out-of-home placement of an Indian child
 - Trying, to the greatest extent possible, to place the child in a foster or adoptive home that:
 - Reflects the unique values of the Indian child’s tribal culture
 - Is able to assist the child in establishing, developing, and maintaining a political, cultural and social relationship with the Indian child’s Tribe or Tribes and tribal community



Best Interests: New BIA Regulations

- The comments to the BIA regulations consistently reference that compliance with the ICWA is in the child's best interests, but reject an independent best interests analysis.
 - “Congress, however, also recognized that talismanic reliance on the “best interests” standard would not actually serve Indian children's best interests, as that “legal principle is vague, at best”...[i]nstead of a vague standard, Congress provided specific procedural and substantive protections through pre-established, objective rules that avoid decisions being made based on the subjective values that Congress was worried about.”
- The BIA regulations do not use the term “best interests.”



Voluntary Foster Care: LB 566

- LB 566 adds a “voluntary foster care placement” to the list of applicable proceedings that are covered by the ICWA.
 - This only includes a non-court proceeding in which the Department or the State is facilitating a voluntary foster care placement or “in-home services” to families at risk of entering the foster care system.
- The full protections of the ICWA do not apply to this proceeding, instead only the following protections apply:
 - Active efforts
 - Notice (within 5 days of services starting)
 - Intervention (or participation in the provision of services)
 - Placement preferences
 - Additional procedural assurances for relinquishments and terminations arising out of voluntary foster care placements

Neb. Rev. Stat. § § 43-1503(3)(e), 43-1504, 43-1505(4), 43-1506, and 43-1508



Voluntary Proceedings: New BIA Regulations

- “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, or his or her or their free will, without a threat of removal by a State agency, consented to for the the Indian child, or a proceeding for voluntary termination of parental rights.”



Voluntary Proceedings: New BIA Regulations

- In a voluntary proceeding:
 - The State court must require the parties to state on the record whether there is reason to believe the child is an Indian child;
 - If there is reason to believe the child is an Indian child, the State court must ensure that the party seeking placement has taken all reasonable steps to verify the child's status (including contacting the Tribe;
 - A consenting parent's request for anonymity must be respected by the Tribe and State court;
 - ICWA's placement preferences apply;
 - The parent or Indian custodian's consent must consent to a placement in writing and recorded in a court of competent jurisdiction pursuant to § § 25 CFR 23.125—23.128



Active Efforts

- The ICWA previously did not define active efforts, but stated:
 - “Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”



Active Efforts: LB 566

- LB 566 provides a definition of what constitutes active efforts. The list includes:
 - A concerted level of casework, prior to and after the removal of an Indian child, consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe;
 - A request to convene traditional and customary support and services;
 - Actively engaging, assisting, and monitoring the family's access to and progress in culturally appropriate resources;
 - Identification of and provision of information to the Indian child's extended family members concerning appropriate community, state, and federal resources
 - Identification of and attempts to engage tribal representatives;
 - Consultation with extended family members to identify family or tribal support services; and
 - Exhaustion of all available tribally appropriate family preservation alternatives.

Neb. Rev. Stat. § 43-1503(1)



Active Efforts: LB 566

- LB 566 also provides additional provisions to ensure evidence of active efforts are put before the court in every ICWA case
 - The Department or the State is required to provide a written report of its attempts to provide active efforts at every hearing involving an Indian child. Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law shall satisfy the court that:
 - 1) active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; or
 - 2) *unite the parent or Indian custodian with the Indian child*; and
 - 3) that these efforts have proved unsuccessful.

Neb. Rev. Stat. § 43-1505(4)



Active Efforts: LB 566

- Any written evidence showing that active efforts have been made shall be admissible in a proceeding under the Nebraska Indian Child Welfare Act.
- Prior to the court ordering placement of the child in foster care or the termination of parental rights, the court shall make a determination that:
 - active efforts have been provided; or
 - *that the party seeking placement or termination has demonstrated that attempts were made to provide active efforts to the extent possible under the circumstances.*



Active Efforts: New BIA Regulations

- The new BIA regulations provide a non-exclusive list of what may be encompassed by active efforts. The list includes:
 - Conducting a comprehensive assessment of the Indian child’s family;
 - Identifying appropriate services for the parents;
 - Identifying, notifying, and inviting representatives of the Indian child’s Tribe to participate in providing services and participate in planning;
 - Conducting a diligent search for extended family members and consulting with extended family members;
 - 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;
 - Taking steps to keep siblings together when possible;
 - Supporting regular visits with parents or Indian custodians in the most natural setting possible;
 - Identifying community resources like housing, financial, transportation, mental health, substance abuse, and peer support services;
 - Monitoring progress in services;
 - Considering alternative ways to address the needs of the Indian family; and
 - Providing post-reunification services.

25 CFR 23.2



Placement Preferences

- The first placement preference for Indian children, for both adoptive and foster care placements under the ICWA, has always been extended family members.
- ICWA has always allowed Tribes to create their own definition of extended family.
- **If no tribal law definition exists**, the ICWA defines extended family members as:
 - “a person who has reached the age of eighteen and who is the Indian child's parent, grandparent, aunt or uncle, clan member, band member, sibling, brother-in-law or sister-in-law, niece or nephew, cousin, or stepparent”
- This definition **may include *both* Indian and non-Indian relatives.**
 - Legislative history indicates that, where possible, an Indian child should remain in the Indian community, but the section “is not to be read as precluding the placement of an Indian child with a non-Indian [relative] family.”

Neb. Rev. Stat. § 43-1503(5)



Placement Preferences: LB 566

Adoptive Placement Preferences

- In any adoptive placement of an Indian child under state law, a preference shall be given, in the absence of good cause to the contrary, to a placement with the following *in descending priority order*:
 - A member of the Indian child’s extended family;
 - Other members of the Indian child's Tribe *or Tribes*;
 - Other Indian families; *or*
 - *A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child’s Tribe or Tribes.*

Neb. Rev. Stat. § 43-1508(1)



Placement Preferences: LB 566

Foster Placement Preferences

- In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with one of the following in descending priority order:
 - A member of the Indian child's extended family;
 - Other members of the Indian child's Tribe or Tribes;
 - A foster home licensed, approved, or specified by the Indian child's Tribe or Tribes;
 - An Indian foster home licensed or approved by an authorized non-Indian licensing authority;
 - *A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's Tribe;*
 - An Indian facility or program 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; or
 - A non-Indian facility or program for children approved by an Indian Tribe.



Placement Preferences: LB 566

Good Cause to Deviate

- LB 566 codifies the old BIA guidelines requirements for finding good cause to deviate from the ICWA's placement preferences.
 - Good cause to deviate includes:
 - The request of the biological parents or the Indian child when the Indian child is at least twelve years of age;
 - The extraordinary physical or emotional needs of the Indian child as established by testimony of a qualified expert witness; or
 - The unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria.
- The burden to show there is good cause to deviate from the placement preferences must be met by clear and convincing evidence by the party urging that the preferences not be followed.



Placement Preferences: BIA

Regulations Good Cause to Deviate

- The BIA regulations update and add additional details in considering whether there is good cause to deviate from the placement preferences.
 - A court’s determination of good cause to depart from the placement preferences must be made on the record or in writing and should be based on one or more of the following considerations:
 - The request of one or both of the Indian child’s parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference;
 - The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
 - The presence of a sibling attachment that can be maintained only through a particular placement; and
 - The unavailability of a suitable placement after a diligent search
 - A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.
 - A placement may not depart from the preferences based solely on ordinary attachment or bonding that flowed from time spent in a non-preferred placement that was made in violation of ICWA.



Qualified Expert Witnesses: LB 566

- LB 566 defines a Qualified Expert Witness as one of the following persons in descending priority order:
 - A member of the Indian child's Tribe or Tribes who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family and childrearing practices;
 - A member of another Tribe who is recognized to be a qualified expert witness by the Indian child's Tribe or Tribes based on his or her knowledge of the delivery of child and family services to Indians and the Indian child's Tribe or Tribes;
 - A lay expert witness that possesses substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's Tribe or Tribes;
 - A professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child's Tribe or Tribes; and
 - Any other professional person having substantial education in the area of his or her specialty.
- A court may still assess the credibility of individual qualified expert witnesses.



Qualified Expert Witnesses: New BIA Regulations

- The New BIA Regulations state that:
 - A qualified expert witness should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe.
 - A person may be designated by the Indian child's Tribe as being qualified to testify to the prevailing social and cultural standards of the child's Tribe.
 - The court or any party may request the assistance of the Indian child's Tribe or the BIA office service the child's Tribe in locating a QEW.
 - The social worker regularly assigned to the child may not serve as a QEW in child-custody proceedings concerning the child.

25 CFR 23.122



Emergency Foster Care

Placement: LB 566

- “Foster care placement which shall mean any action removing an Indian child from his or her parent or Indian custodian for temporary **or emergency** 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.”

Neb. Rev. Stat. § 43-1503(3)



Emergency Foster Care

Placement: New BIA Regulations

- The New BIA Regulations state that:
 - Emergency removals must terminate immediately when no longer necessary to prevent imminent physical damage or harm to the child.
 - The court must:
 - Make a finding on the record that the removal or placement is necessary to prevent imminent physical damage or harm to the child;
 - Promptly hold a hearing on whether the emergency removal continues to be necessary when information indicates the emergency has ended;
 - At any court hearing during the emergency proceeding, determine whether the removal is no longer necessary to prevent imminent physical damage or harm to the child; and
 - Immediately terminate the emergency proceeding if there is sufficient evidence to determine the placement is no longer necessary.

80 Fed. Reg. 10146, B.8



Emergency Foster Care

Placement: New BIA Regulations

- An emergency proceeding should not be continued for more than 30 days unless the court determines:
 - Reunification would subject the child to imminent physical damage or harm;
 - The court has been unable to transfer the case to the Tribe; and
 - It has not been possible to initiate a “child-custody proceeding.”
- An emergency proceeding can be terminated by one or more of the following actions:
 - Initiation of a child-custody proceeding;
 - Transfer to a Tribal Court; or
 - Reunification.
- A petition for a court order authorizing the removal, or its accompanying documents, should contain:
 - A statement of the risk to the child and any evidence that the placement continues to be necessary and a detailed account of the situation that led to the removal;
 - The name, Tribal affiliation, and last addresses of the child; parents, and Indian custodian;
 - The age, residence, and domicile of the child, and if child is domiciled on a reservation a statement of efforts made to contact/transfer the case to the Tribe;
 - The steps taken to provide notice to the parents, Indian custodians, and Tribe, or a detailed explanation of the efforts made to locate and contact them; and
 - A statement of the efforts to assist the Indian family.

25 CFR 23.113



Questions?

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