



**New York State  
Office of  
Children & Family  
Services**

**A Guide to Compliance  
With the Federal Indian  
Child Welfare Act  
In New York State**

# **A Guide to Compliance With the Federal Indian Child Welfare Act In New York State**

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The New York State Office of Children and Family Services is committed to helping preserve the rich heritage of Native Americans. The Federal Indian Child Welfare Act (ICWA) became law in 1978, and New York State amended the Social Services Law and state regulations to reflect these federal standards.

OCFS, through its Native American Services component, is available to assist in meeting ICWA requirements. Training is available, upon request, for social services districts and authorized voluntary agencies. Assistance is also available to help caseworkers and other interested parties determine the tribal origin of a child, follow proper tribal notification procedures and identify tribal resources for inclusion in development of the service plan. Upon request, advocacy may be provided on behalf of the Indian child, Indian custodian or Indian Nation.

If you would like technical assistance or training, please contact:

**New York State Office of Children and Family Services  
Native American Services  
295 Main Street  
Suite 545  
Buffalo, NY 14203  
(716) 847-3123**



## Major Provisions of the Federal Indian Child Welfare Act\*

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ICWA is clear that the underlying principle of the Act is to “protect the best interest of Indian children.” ICWA was also designed to “promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families.”

These principles are reflected in the ICWA provisions. In summary form, the major provisions of ICWA are to:

- ◆ **PROVIDE FOR EXCLUSIVE INDIAN TRIBAL JURISDICTION** over child welfare proceedings involving Indian children who reside or are domiciled on Indian reservations except where such jurisdiction is vested in the state by existing federal law, and to authorize the transfer of proceedings involving Indian children not domiciled or resident on reservations from state to tribal courts.
- ◆ **ESTABLISH A RIGHT OF INTERVENTION** in state court regarding foster care and termination-of-parental-rights proceedings on the part of an Indian child’s tribe or Indian custodian.
- ◆ **REQUIRE THAT FULL FAITH AND CREDIT** be accorded to tribal acts, records and judicial proceedings applicable to Indian child custody proceedings by federal and state courts.
- ◆ **REQUIRE**, in any involuntary proceedings in a state court when there is actual or constructive notice that an Indian child is involved, that **NOTICE BE PROVIDED** to the parent or Indian custodian and tribe, or that notice be provided to the Secretary of the Interior when the custodian or tribe is not known.
- ◆ **PROVIDE FOR A RIGHT TO COURT-APPOINTED COUNSEL** for indigent parents in any child removal, placement or termination of parental rights proceedings.

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\*Federal Indian Child Welfare Act: 25 USCA 1901, et seq.

- ◆ **ESTABLISH MINIMUM FEDERAL EVIDENTIARY STANDARDS** and procedures for state court proceedings involving foster care placement of Indian children or the termination of parental rights.
- ◆ **ESTABLISH FEDERAL STANDARDS GOVERNING VOLUNTARY FOSTER CARE PLACEMENTS**, relinquishments or terminations of parental rights and adoptive placements.
- ◆ **ESTABLISH PLACEMENT PREFERENCES AND STANDARDS** governing foster care, pre-adoptive and adoptive placements of Indian children.
- ◆ **PROVIDE FOR A SYSTEM OF RECORD-KEEPING** on the part of states placing Indian children for adoption, and authorizing access to such records by Indian children when they reach the age of 18 years for the purpose of determining tribal affiliation and related rights.
- ◆ **AUTHORIZE** the Secretary of the Interior to award **GRANTS FOR INDIAN TRIBES AND ORGANIZATIONS** for the purposes of establishing and operating Indian child and family service programs and preparing and implementing child welfare codes.
- ◆ **AUTHORIZE THE USE OF INTERIOR DEPARTMENT FUNDS** as nonfederal matching shares in connection with federal Health and Human Services-administered Social Security Act funds, and to provide that the licensing or approval of foster homes or institutions by an Indian tribe shall be deemed the equivalent to the licensing or approval by a state for purposes of qualifying for assistance under federally assisted programs.



## Consideration of the Multiethnic Placement Act

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The provisions of the federal Multiethnic Placement Act which preclude the delay or denial of the placement of a child for adoption or into foster care on the basis of race, color or national origin do not affect the application of the federal Indian Child Welfare Act [*See 42 USCA Section 1996 b (3)*].

## New York State



# Statutory & Regulatory Requirements\* to Implement the Federal Indian Child Welfare Act

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**REASONABLE EFFORTS TO PREVENT PLACEMENT OF AN INDIAN CHILD** [*OCFS Regulation, 18 NYCRR 431.18 (d)*]. This section of the regulation requires that, in any child custody proceeding initiated by the social services district pursuant to Section 358-a or 384-b of the Social Services Law or Article 3, 7 or 10 of the Family Court Act, which involves an Indian child, the social services district must demonstrate to the court that, prior to the commencement of such proceeding, reasonable efforts were made to alleviate the need to remove the Indian child from his or her home. These efforts must involve using available resources of the child's extended family, the tribe/nation and Indian social services agencies.

**FOSTER CARE PLACEMENT PREFERENCES** [*OCFS Regulation, 18 NYCRR 431.18 (f) (1)*]. This section establishes a required order of preference for foster care placements of Indian children. Placement of an Indian child in accordance with the preference requirements in this section supersedes all other continuity of environment factors in the placement of an Indian child. An authorized agency providing foster care to an Indian child in the absence of good cause to the contrary is required to place the child with:

- ◆ First, a member of the child's extended family;
- ◆ Second, a foster home certified, approved or specified by the Indian child's tribe and approved by the appropriate social services district;
- ◆ Third, an Indian foster home certified or approved by an authorized agency to provide foster care services;
- ◆ Fourth, an institution for children approved by an Indian tribe or operated by an Indian organization which has a program to meet the needs of the child.

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\**New York State Social Services Law, Section 39, and Regulation 18 NYCRR 431.18.*

**ADOPTION PLACEMENT PREFERENCES** [*OCFS Regulation, 18 NYCRR 431.18 (g) (1)*]. This section establishes a required order of preference in an adoptive placement of an Indian child. An authorized agency providing adoption services to an Indian child is required, in the absence of good cause to the contrary, to place the child with:

- ◆ First, a member of the child's extended family;
- ◆ Second, other members of the child's Indian tribe; or
- ◆ Third, other Indian families.

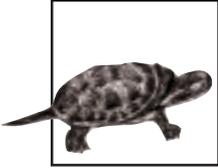
**INDIAN TRIBE INVOLVEMENT IN SERVICE PLAN DEVELOPMENT** [*OCFS Regulations, 18 NYCRR 428.9 and 430.12 (c) (2)(i) (a)*]. These sections require social services districts to make efforts to involve the child's Indian tribe in the development of the service plan. Also, whenever possible, the social services district is required to involve a qualified expert as defined in 18 NYCRR 431.18 (a) (5) in the formulation of the service plan.

**TRIBAL ACCESS TO CASE INFORMATION** [*OCFS Regulations, 18 NYCRR 430.11 (c) (2) (v) and 430.12 (e) (2) (iii) (b)*]. These sections require social services districts to allow the child's Indian tribe access to information concerning efforts to comply with the order of placement preferences requirements identified in 431.18 (f) (1) and 431.18 (g) (1) of the regulation.

**NOTIFICATION REQUIREMENTS** [*OCFS Regulation, 18 NYCRR 431.18(c)*]. This section requires a social services district, in any child custody proceeding initiated by the district pursuant to Section 384-b of the Social Services Law or Article 10 of the Family Court Act, to notify the child's parent or Indian custodian and the child's Indian tribe, by registered mail, of the pending proceeding and of their right to intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the notice must be given to the Secretary of the Interior and the New York State Office of Children and Family Services (OCFS) by registered mail. The notice must contain the child's name, address and other information that is specified in the regulations.

**NOTIFYING THE FAMILY COURT** [*OCFS Regulation, 18NYCRR 431.18 (e)*]. This section requires that in any child custody proceeding initiated by the social services district pursuant to Section 358-a or 384-b of the Social Services Law or Article 10 of the Family Court Act, the social services district must inquire whether the child is an Indian and notify the Court in writing where there is reason to believe that the child involved is an Indian.

**HIGHER FEDERAL STANDARD OF EVIDENCE** [*OCFS Regulation, 18 NYCRR 431.18 (b)*]. This section requires social services districts to satisfy higher standards of evidence in foster care proceedings and proceedings to terminate parental rights involving Indian children.



## **Tribal Notification Procedures**

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As indicated in the major provisions of the Indian Child Welfare Act and OCFS Regulations [18 NYCRR 431.18 (c)], notification of the pending proceeding must be provided to the tribe. The contents of such notification of the child custody proceeding should include the following information:

- ◆ The child's name, child's date of birth, child's place of birth;
- ◆ The child's tribal affiliation, if known;
- ◆ The names of the child's parents, dates of birth of the child's parents, places of birth of the child's parents, and the child's mother's maiden name;
- ◆ A copy of the petition filed with the court;
- ◆ A statement of the rights of the biological parents/custodians to intervene in the proceeding;
- ◆ A statement of the right under federal law to court appointed counsel; and
- ◆ The location, mailing address and telephone number of the court.

# **New York State Indian Nations/Tribes**

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## **Iroquois Nations** *(State and Federally Recognized)*

### **Cayuga Nation**

P.O. Box 11  
Versailles, NY 14168  
(716) 337-4270

### **Oneida Indian Nation**

Oneida Indian Nation  
Member Benefits  
577 Main Street  
Oneida, NY 13421  
(315) 829-8337

### **Onondaga Nation**

Onondaga Nation  
Council of Chiefs  
P.O. Box 85  
Nedrow, NY 13120  
(315) 469-1875

### **St. Regis Mohawk Tribe**

St. Regis Mohawk  
Reservation  
412 State Route 37  
Akwesasne, NY 13655  
(518) 358-4516

### **Seneca Nation**

Allegany Reservation  
P.O. Box 231  
Salamanca, NY 14779  
(716) 945-1790

### **Cattaraugus Reservation**

12387 Route 438  
Irving, NY 14081  
(716) 532-4093

### **Tonawanda Band of Senecas**

Tonawanda Reservation  
7027 Meadville Road  
Basom, NY 14013  
(716) 542-4244

### **Tuscarora Nation**

2015 Mount Hope Road  
Lewiston, NY 14092  
Cell: (716) 622-7061  
Cell: (716) 417-7764  
Office: (716) 297-0598

## **Algonquin Nations** *(State Recognized Only)*

### **Shinnecock Indian Nation**

P.O. Box 1268  
Southampton, NY 11969  
(631) 287-6474

### **Unkechaug Indian Nation**

Poospatuck Reservation  
P.O. Box 86  
Mastic, NY 11950  
(631) 281-6464

## NOTES

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For further information on Native American programs, see the *Indian Child Welfare Act (ICWA) Compliance Desk Aid for New York State Child Welfare Workers* (OCFS Publication #5046) and *A Proud Heritage: Native American Services in New York State* (OCFS Publication #4629).

**New York State  
Office of  
Children & Family  
Services**

Capital View Office Park  
52 Washington Street  
Rensselaer, NY 12144

Visit our website at:  
[www.ocfs.state.ny.us](http://www.ocfs.state.ny.us)

To report child abuse and  
neglect, call:  
**1-800-342-3720**

For information on the  
Abandoned Infant Protection Act,  
call:  
**1-866-505-SAFE**

For child care, foster care, and  
adoption information, call:  
**1-800-345-KIDS**

For information on Native American  
services, call:  
**716-847-3123**

**State of New York**



**Office of Children & Family Services**

Pursuant to the Americans with Disabilities Act, the New York State Office of Children and Family Services will make this material available in large print or on audiotape upon request.

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