

DEPARTMENT OF SOCIAL SERVICES

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May 15, 1979

ALL-COUNTY LETTER NO. 79-30

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY PROBATION DEPARTMENTS
ALL PUBLIC AND PRIVATE ADOPTION AGENCIES
ALL DEPARTMENT OF SOCIAL SERVICES
ADOPTIONS DISTRICT OFFICES

SUBJECT: PUBLIC LAW 95-608, INDIAN CHILD WELFARE ACT OF 1978

REFERENCE:

Public Law 95-608, known as the Indian Child Welfare Act of 1978, was enacted November 8, 1978. In general, the operational provisions of the Act are effective 180 days after enactment, or May 7, 1979.

The Indian Child Welfare Act will result in very major changes in the care of Indian children by emphasizing the importance of enabling Indian children to remain in their own homes, or if that is not possible, to be in an out-of-home care placement which preserves familial or cultural ties.

While the Act affects all aspects of child welfare services, the Department wishes to call your attention in this letter particularly to the implications for the Adoptions program. Those provisions which pertain to termination of parental rights (voluntary or involuntary), the selection of an adoptive family, and possible set aside of an adoption decree pose some major policy issues with regard to current California law. Any adoption plan for an Indian child initiated and completed after May 7, 1979 is subject to the provisions of the Federal Act.

The Department is at present developing regulations which will be consistent with the Federal Act. In order to determine the number of Indian children under care and to administratively identify those children to whom this act will apply, we are requesting that public and private adoption agencies establish by May 30 and maintain thereafter an up-to-date list of Indian children receiving adoption services which, if necessary, can be submitted to the Department. The list should include the following information:

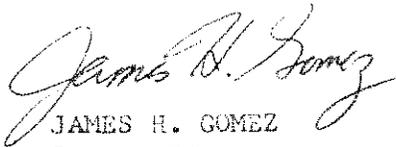
1. Name of child and natural parents; state case number, if known, and/or applicable
2. Birthdate of child

3. Degree of Indian ancestry
4. Tribal affiliation
5. Legal Status, i.e., whether child is legally free for adoption and dates of any termination actions
6. Placement status, i.e., date of any agency placement or independent adoption petition

Until regulations are adopted, agencies that have questions about appropriate actions to take on any child accepted for adoption services but not legally freed or placed by May 7, 1979, or questions on any independent petition filed on or after that date, should discuss the case with their consultant in the Adoptions Branch. District offices in the Department should request consultation through their own bureau.

As an additional interim procedure, we are also requesting that adoption agencies and Department District Offices advise the Adoptions Branch by June 30, 1979, of the number of Indian children receiving adoption services, according to the list compiled.

Attached is a copy of the Indian Child Welfare Act and proposed Department of the Interior Regulations which also includes guidelines to state courts on Indian child custody proceedings.



JAMES H. GOMEZ
Deputy Director

Attachments

cc: CWDA

Public Law 95-608
95th Congress

An Act

To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes.

Nov. 8, 1978
[S. 1214]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Child Welfare Act of 1978".

Indian Child
Welfare Act of
1978.
25 USC 1901
note.
25 USC 1901.

SEC. 2. Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

Congress,
responsibility for
protection of
Indians.

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

SEC. 3. The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and 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 and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

25 USC 1902.

SEC. 4. For the purposes of this Act, except as may be specifically provided otherwise, the term—

Definitions.
25 USC 1903.

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its 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;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean 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; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of 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 stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688, 689);

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (A), 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;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians 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 (85 Stat. 688, 689), as amended;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

43 USC 1696.

43 USC 1602.

- (11) "Secretary" means the Secretary of the Interior; and
- (12) "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 which is vested with authority over child custody proceedings.

TITLE I—CHILD CUSTODY PROCEEDINGS

Sec. 101. (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

Indian tribes,
exclusive
jurisdiction over
Indian child
custody
proceedings.
25 USC 1911.

(b) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

Sec. 102. (a) In any involuntary proceeding in a State court, where 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 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 shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

Foster care
placement, court
proceedings.
25 USC 1912.

(b) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court

shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(c) Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) 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.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Parental rights,
voluntary
termination.
25 USC 1913.

SEC. 103. (a) Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

25 USC 1914.

SEC. 104. Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of com-

petent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, and 103 of this Act.

Sec. 105. (a) 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 (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

Adoptive placement of Indian children.
25 USC 1915.

(b) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. 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—

- (i) a member of the Indian child's extended family;
- (ii) a foster home licensed, approved, or specified by the Indian child's tribe;
- (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (iv) 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) In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

Sec. 106. (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 102 of this Act, that such return of custody is not in the best interests of the child.

Petition, return of custody.
25 USC 1916.

(b) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this Act, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

Removal from foster care home.

Sec. 107. Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement,

25 USC 1917.

Reassumption,
jurisdiction over
child custody
proceedings.
25 USC 1918.
18 USC prec.
1151 note.
25 USC 1321.
28 USC 1360
note.

the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

Sec. 108. (a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) (1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things:

- (i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;
- (ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;
- (iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and
- (iv) the feasibility of the plan in cases of multiracial occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 101(a) of this Act are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 101(b) of this Act, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 101(a) over limited community or geographic areas without regard for the reservation status of the area affected.

(c) If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a), the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act.

States and Indian
tribes,
agreements.
25 USC 1919.

Sec. 109. (a) States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such

revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

Sec. 110. Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

Improper removal of child from custody.
25 USC 1920.

Sec. 111. In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this title, the State or Federal court shall apply the State or Federal standard.

25 USC 1921.

Sec. 112. Nothing in this title shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

Emergency removal of child.
25 USC 1922.

Sec. 113. None of the provisions of this title, except sections 101 (a), 108, and 109, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

Effective date.
25 USC 1923.

TITLE II—INDIAN CHILD AND FAMILY PROGRAMS

Sec. 201. (a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

25 USC 1931.

- (1) a system for licensing or otherwise regulating Indian foster and adoptive homes;
- (2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

42 USC 620,
1397.

Additional
services.
25 USC 1932.

SEC. 202. The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

Funds.
25 USC 1933.

SEC. 203. (a) In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare: *Provided*, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended. 25 USC 13.

Sec. 204. For the purposes of sections 202 and 203 of this title, the term "Indian" shall include persons defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (90 Stat. 1400, 1401). 25 USC 1934.
25 USC 1603.

TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

Sec. 301. (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—

- (1) the name and tribal affiliation of the child;
- (2) the names and addresses of the biological parents;
- (3) the names and addresses of the adoptive parents; and
- (4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

Sec. 302. Within one hundred and eighty days after the enactment of this Act, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act.

Final decree,
information to be
included.
25 USC 1951.

Effective date.
Rules and
regulations.
25 USC 1952.

TITLE IV—MISCELLANEOUS

Day schools.
25 USC 1961.

Report to
congressional
committees.

Copies to each
State.
25 USC 1962.

25 USC 1963.

Sec. 401. (a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education, and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from the date of this Act. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

Sec. 402. Within sixty days after enactment of this Act, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this Act, together with committee reports and an explanation of the provisions of this Act.

Sec. 403. If any provision of this Act or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

Approved November 8, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1386, accompanying H.R. 12533 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 95-597 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD:

Vol. 123 (1978): Nov. 4, considered and passed Senate.

Vol. 124 (1978): Oct. 14, H.R. 12533 considered and passed House; passage vacated, and S. 1214, amended, passed in lieu.

Oct. 15, Senate concurred in House amendments.

○

Monday
April 23, 1979

Part II

Department of the
Interior

Bureau of Indian Affairs

Indian Child Welfare; Proposed
Administration and Funding Provisions;
Procedures for Tribal Reassumption of
Jurisdiction Over Child Custody
Proceedings and Recommended
Guidelines for State Courts—Indian Child
Custody Proceedings

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 13]

Tribal Reassumption of Jurisdiction
Over Child Custody Proceedings

April 17, 1978.

AGENCY: Bureau of Indian Affairs,
Department of the Interior.

ACTION: Proposed Rulemaking.

SUMMARY: The Bureau of Indian Affairs proposes to add a new part to its regulations to establish procedures by which an Indian tribe may reassume jurisdiction over Indian child custody proceedings as authorized by the Indian Child Welfare Act, Pub. L. 95-608, 92 Stat. 3089, 25 U.S.C. § 1918. It is intended that when published as final rulemaking these procedures will complement those related procedures to be published in 25 CFR Part 23, Indian Child Welfare Act, and also will complement recommended guidelines for State courts relative to Indian child custody proceedings to be published as a Federal Register Notice.

DATE: Comments must be received on or before May 23, 1979.

ADDRESS: Written comments should be addressed to David Etheridge, Officer of the Solicitor, Division of Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: David Etheridge, Office of the Solicitor, Division of Indian Affairs, Department of the Interior, telephone (202) 343-6987.

SUPPLEMENTARY INFORMATION: These proposed regulations incorporate viewpoints expressed during public hearings conducted during March, 1979. Additional and supplemental viewpoints are now solicited prior to publication of the regulations in final form.

The authority for issuing these regulations is contained in 5 U.S.C. 301 and sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 209 DM.

The primary author of this document is David Etheridge, Office of the Solicitor, Division of Indian Affairs, Department of the Interior.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12064 and 43 CFR Part 14.

It is proposed to add Part 13 to subchapter B, Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

PART 13—TRIBAL REASSUMPTION
OF JURISDICTION OVER CHILD
CUSTODY PROCEEDINGS

Subpart A—Purpose

Sec.

13.1 Purpose

Subpart B—Reassumption

13.11 Contents of reassumption petition.

13.12 Criteria for approval of reassumption petitions.

13.13 Technical assistance prior to petitioning.

13.14 Secretarial review procedure.

13.15 Finality of decision by the Secretary.

13.16 Technical assistance after disapproval.

Authority: 5 U.S.C. 301, secs. 463, 465, of the revised statutes (25 U.S.C. 2 and 9) and 209 DM.

Subpart A—Purpose

§ 13.1 Purpose.

(a) The regulations of this part establish the procedures by which an Indian tribe that occupies territory that has become subject to concurrent or exclusive state jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), or pursuant to any other federal statute, may reassume jurisdiction over Indian child custody proceedings as authorized by the Indian Child Welfare Act, Pub. L. 95-608, 92 Stat. 3089 25 U.S.C. 1918.

(b) On some reservations there are disputes concerning whether certain federal acts have subjected Indian child custody proceedings to state jurisdiction. Tribes located on those reservations may wish to exercise such jurisdiction without the necessity of engaging in protracted litigation. The procedures in this part also permit such tribes to secure unquestioned jurisdiction over Indian child custody matters without relinquishing their claim that no federal statute had ever deprived them of that jurisdiction.

Subpart B—Reassumption

§ 13.11 Contents of reassumption petition.

A petition to reassume jurisdiction over Indian child custody proceedings, and the accompanying plan shall contain, where available, the following information in sufficient detail to permit the Secretary to determine whether reassumption is feasible:

(a) Full name, address and telephone number of the petitioning tribe or tribes.

(b) A resolution by the tribal governing body supporting the petition and plan. If the territory involved is occupied by more than one tribe, the

governing body of each tribe involved must adopt such a resolution.

(c) The proposed date on which jurisdiction would be reassumed.

(d) Citation of the statute or statutes that has provided the basis for state assertion of jurisdiction over Indian child custody proceedings arising in the area covered by the petition.

(e) Legal description of the territory over which jurisdiction will be assumed together with a statement of the size of territory in square miles.

(f) If the statute or statutes resulting in state assertion of jurisdiction is a surplus land statute, a legal description of the reservation boundaries that will be reestablished for purposes of the Indian Child Welfare Act.

(g) Total number of Indian children residing in the affected territory.

(h) Total number of members in the petitioning tribe or tribes.

(i) Current criteria for membership in the tribe or tribes.

(j) Explanation of procedure by which a person with a legitimate interest in a child custody proceeding may determine whether a particular individual is a member of the tribe or tribes.

(k) Citation to provision in tribal constitution or similar governing document that authorizes the tribal governing body to exercise jurisdiction over Indian child custody matters.

(l) Description of judicial system that has been or will be established to adjudicate child custody disputes. The description shall include an organization chart and budget for the court. The source and amount of non-tribal funds that will be used to fund the court shall be identified.

(m) Copy of any tribal ordinances or court rules establishing procedures or rules for the adjudicating of Indian child custody matters.

(n) Description of support services (such as social service personnel and child care facilities) that will be available to the tribe or tribes when jurisdiction is reassumed.

(o) Estimate of the number of child custody cases expected during a year together with an explanation of how the number was estimated.

(p) Copy of any tribal agreements with states, other tribes or non-Indian local governments relating to child custody matters.

§ 13.12 Criteria for approval of reassumption petitions.

The Secretary shall approve a tribal petition to reassume jurisdiction over Indian child custody matters if:

(a) The territory affected by the petition was previously subject to tribal

- 23.26 Request from tribal governing body or Indian organization.
- 23.27 Grant approval limitation.
- 23.28 Submitting application.
- 23.29 Agency office review and recommendation.
- 23.30 Deadline for agency office action.
- 23.31 Area office review and action.
- 23.32 Deadline for Area office action.
- 23.33 Central office review and decision.
- 23.34 Deadline for Central office action.
- 23.35 Grant execution and administration.
- 23.36 Subgrants and subcontracts.

Subpart D—General Grant Requirements

- 23.41 Applicability
- 23.42 Reports and availability of information to Indians.
- 23.43 Matching share.
- 23.44 Performing personal services.
- 23.45 Penalties.
- 23.46 Fair and uniform services.

Subpart E—Grant Revision, Cancellation or Assumption

- 23.51 Revisions or amendments of grants.
- 23.52 Assumption.

Subpart F—Hearings and Appeals

- 23.61 Hearings.
- 23.62 Appeals from decision or action by Superintendent.
- 23.62 Appeals from decision or action by Area Director.
- 23.64 Appeals from decision or action by Commissioner.
- 23.65 Failure of Agency or Area office to act.

Subpart G—Administrative Requirements

- 23.71 Uniform administrative Requirements for grants.

Subpart H—Administrative Provisions

- 23.81 Recordkeeping and information availability.

Authority: 5 U.S.C. 301; secs. 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 209 D.M.A.

Subpart A—Purpose, Definitions and Policy

§ 23.1 Purpose.

The purpose of the regulations in this Part is to govern the provision of administration and funding of the Indian Child Welfare Act of 1978 (Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C. 1901-1952.)

§ 23.2 Definitions.

(a) "Act" means the Indian Child Welfare Act, Pub. L. 95-608 (92 Stat. 3073), 25 U.S.C. 1901 *et seq.*

(b) "Child custody proceeding" shall mean and include—

(1) "Foster care placement" which shall mean any action removing an Indian child from its 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;

(2) "Termination of parental rights" which shall mean an action resulting in the termination of the parent-child relationship;

(3) "Preadoptive placement" which shall mean 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; and

(4) "Adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(5) Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(c) "Extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of 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 stepparent.

(d) "Indian" means: (1) For purposes of matters related to child custody proceedings any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688, 689); (2) For purposes of Indian child and family programs under sections 202 and 203 of the Indian Child Welfare Act (92 Stat. 3073) any person who, irrespective of

whether he or she lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or is an Eskimo or Aleut or other Alaska Native, or is considered by the Secretary of the Interior to be an Indian for any purpose, or is determined to be an Indian under regulations promulgated by the Secretary.

(e) "Indian child" means any unmarried person who is under age eighteen and is either (1) a member of an Indian tribe, or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. For services only under § 23.45(c) any person who is a member

of an Indian tribe or any individual who (1) irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band or other organized group terminated since 1940 or those recognized now or in the future by the State in which they reside, or who is the natural child or grandchild of any such member, or (2) is an Eskimo or Aleut or other Alaska Native, or (3) is considered by the Secretary of the Interior to be an Indian for any purpose, or (4) is determined to be an Indian under regulations promulgated by the Secretary.

(f) "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 with which the Indian child has the more significant contacts.

(g) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

(h) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

(i) "Indian tribe" means any Indian tribe, band, nation or other organized group or community of Indians 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 (85 Stat. 688, 689), as amended.

(j) "Parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.

(k) "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 which is vested with authority over child custody proceedings.

(l) For other applicable definitions refer to 25 CFR 20.1 and 271.2.

§ 23.3 Policy.

The policy of the Act and of these regulations is to protect Indian children

jurisdiction and is presently occupied by the tribe;

(b) The constitution or other governing document of the petitioning tribe or tribes authorizes the tribal governing body or bodies to exercise jurisdiction over Indian child custody matters;

(c) The information and documents required by § 13.11 of this part have been provided;

(d) A tribal judicial system has been established that is capable of adjudicating child custody matters in a manner that meets the requirements of the Indian Civil Rights Act, 25 U.S.C. *et seq.*;

(e) Child care services sufficient to meet the needs of any child the tribal judicial system finds must be removed from parental custody are available; and

(f) The tribe or tribes have established a procedure for clearly identifying who is a member of the tribe or is eligible for membership.

§ 13.13 Technical assistance prior to petitioning.

(a) Upon the request of a tribe desiring to reassume jurisdiction over Indian child custody matters, BIA agency and Area offices shall provide technical assistance to enable the tribe to meet the requirements for Secretarial approval of the petition.

(b) Upon the request of such a tribe, to the extent funds are available, the BIA may provide funding to assist the tribe in developing the judicial and child care services that will be needed when jurisdiction is reassumed.

§ 13.14 Secretarial review procedure.

(a) Upon receipt of the petition the Secretary shall cause to be published in the Federal Register a notice stating that the petition has been received and is under review and that it may be inspected and copied at the BIA agency office that serves the petitioning tribe.

(b) The Secretary shall publish a notice in the Federal Register stating whether the petition has been approved or disapproved at least 45 days after the petition was received. Notice that a petition has been disapproved shall be published no later than 75 days after receipt. Notice that a petition has been approved shall be published on a date requested by the petitioning tribe or within 75 days after receipt—whichever is later.

(c) Notice of approval shall include a legal description of the territory subject to the reassumption of jurisdiction and shall state the date on which the reassumption becomes effective. A copy of the notice shall immediately be sent to the petitioning tribe and to the

attorney general of the affected state or states.

(d) Notice that a petition has been disapproved shall state the reasons for the disapproval and shall immediately be sent to the petitioning tribe.

§ 13.16 Finality of decision by the Secretary.

The decision of the Secretary to approve or disapprove a tribal petition is final for the Department.

§ 13.17 Technical assistance after disapproval.

If a petition is disapproved, the BIA shall immediately offer technical assistance to the tribal governing body for the purpose of overcoming the defect in the petition or plan that resulted in the disapproval.

Rick Levin,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 79-12298 Filed 4-20-79; 8:45 am]

BILLING CODE 4310-02-M

[25 CFR Part 23]

Indian Child Welfare Act

April 17, 1979.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Bureau of Indian Affairs proposes to add a new part to its regulations to implement the provisions of the Indian Child Welfare Act of 1978 (Pub. L. 95-608). The Indian Child Welfare Act seeks to protect the best interest of Indian children by promoting the stability and security of Indian families and tribes by preventing the unwarranted and arbitrary removal of Indian children from their Indian homes; establishing procedures for transferring Indian child custody proceedings from State courts to the appropriate Tribal courts; setting forth criteria for placement of children voluntarily or involuntarily removed from their parents, guardians, or custodians; providing a system of intervention in state court proceedings by the child's parents, relatives or the child's tribe in involuntary removal and adoption matters of Indian children, and providing grants to Indian tribes and organizations on or "near" reservations or off reservations to plan, establish, operate and manage child placement and family service programs to carry out the intent of the act. It is intended that when published as final rulemaking, these regulations will complement those related procedures to be published in 25 CFR Part 13, Tribal Reassumption of Jurisdiction Over Child Custody

Proceedings, and will also complement recommended guidelines for State courts relative to Indian child custody proceedings to be published as a Federal Register Notice.

DATE: Comments must be received on or before May 23, 1979.

ADDRESS: Written comments should be addressed to: Chief, Division of Social Services, Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20215.

FOR FURTHER INFORMATION CONTACT: Raymond V. Butler, Chief, Division of Social Services, Bureau of Indian Affairs, telephone (703) 235-2756.

SUPPLEMENTARY INFORMATION: These proposed regulations incorporate viewpoints expressed during public hearings conducted during March, 1979. Additional and supplemental viewpoints are now solicited prior to publication of the regulations in final form. The authority for issuing these regulations is contained in 5 U.S.C. 301 and sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 209 DM 8. The primary authors of this document are Raymond V. Butler, Chief, Division of Social Services, Bureau of Indian Affairs, and David Etheridge, Office of the Solicitor, Department of the Interior.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

It is proposed to add Part 23 to Subchapter D, Chapter I, of Title 25 of the Code of Federal Regulations to read as follows:

PART 23—INDIAN CHILD WELFARE ACT

Subpart A—Purpose, Definitions and Policy

Sec.

23.1 Purpose.

23.2 Definitions.

23.3 Policy.

Subpart B—Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel

23.11 Notice.

23.12 Designated agent for service of notice.

23.13 Payment for appointed counsel in State Indian child custody proceedings.

Subpart C—Grants to Indian Tribes and Indian Organizations for Indian Child and Family Programs

23.21 Eligibility requirements.

23.22 Purposes of grants.

23.23 Obtaining application instructions and materials.

23.24 Content of application.

23.25 Application selection criteria.

treatment of Indian families and for the temporary custody of Indian children.

(2) Family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities and respite care.

(3) Employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters.

(4) Education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs.

(5) Subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs.

(6) Guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(7) Home improvements programs.

(8) Other activities which have a direct and demonstrable relationship to the provision of child and family service programs.

(b) Preparation and implementation of child welfare codes. An example in this regard is establishment of a system for licensing or otherwise regulating Indian foster and adoptive homes.

(c) Funds made available for grants for the purposes described above may be applied as matching shares for other Federal or non-Federal grant programs as prescribed in § 23.43.

§ 23.23 Obtaining application instructions and materials.

Application instructions and related application materials may be obtained from Superintendents, Area Directors and the Commissioner.

§ 23.24 Content of application.

Application for a grant under this part shall include:

(a) Name and address of Indian tribal governing body(s) or Indian organization applying for a grant.

(b) Descriptive name of project.

(c) Federal funding needed.

(d) Population directly benefiting from the project.

(e) Length of project.

(f) Beginning date.

(g) Project budget categories or items.

(h) Program narrative statement.

(i) Certification or evidence of request by Indian tribe or board of Indian organization.

(j) Name and address of Bureau office to which application is submitted.

(k) Date application is submitted to Bureau.

(l) Additional information pertaining to grant applications for funds to be used as matching shares will be requested as prescribed in § 23.43.

§ 23.25 Application selection criteria.

(a) The Commissioner or designated representative, shall select Indian tribes and Indian organizations for grants under this part whose proposals will in his judgment best promote the purposes of Title II of the Act taking into consideration the following factors:

(1) The number of actual Indian child placements outside the home, the number of Indian family breakups, and the need for directly related preventive programs, all as determined by analysis of relevant statistical and other data, available from tribal and public court records and from the records of tribal, Bureau, and private social services agencies serving Indian children and their families.

(2) The relative accessibility which the Indian population to be served under specific proposal already has to existing child and family service programs emphasizing prevention of Indian family breakup. Factors to be considered in determining relative accessibility include:

(i) Cultural barriers;

(ii) Discrimination against Indians;

(iii) Inability of potential Indian clientele to pay for services;

(iv) Lack of program which provide free service to indigent families;

(v) Technical barriers created by existing public or private programs;

(vi) Availability of transportation to existing programs;

(vii) Distance between the Indian community to be served under the proposal and the nearest existing program.

(3) The extent to which the proposed program would duplicate any existing child and family service program emphasizing prevention of Indian family breakup.

(b) Selection for grants under this part for on or near reservation programs shall be limited to the governing body of the tribe to be served by the grant. However, the governing body of the tribe may make a subgrant or subcontract subject to the provisions of § 23.36.

(c) Selection for grants under this part for off reservation programs shall be limited to those Indian organizations which can demonstrate local majority support from the Indian community or communities to be served by the grant. However, the Indian organization may

make a subgrant or subcontract subject to the provisions of § 23.36. Factors to be considered in determining local majority support include:

(1) Letters of support from individuals and families to be served;

(2) Local Indian community representation in and control over the Indian entity requesting the grant.

(3) Other verifiable evidence of local majority support which may be accepted in lieu of paragraph (c) (1) and (2) of this section when the applicant is an established multi-service urban Indian center. Such evidence may include but not be limited to the organization's charter or its record of administration of grants or contracts obtained from private, state or other Federal governmental entities.

§ 23.46 Request from tribal governing body or Indian organization.

(a) The Bureau shall only make a grant under this part for an on or near reservation program when officially requested to do so by a tribal governing body. This request may be in the form of a tribal resolution, an endorsement included in the grant application or such other forms as the tribal constitution or current practice requires.

(b) The Bureau shall only make a grant under this part for an off reservation program when officially requested to do so by the governing body of an Indian organization. This request may be in one of the forms prescribed in paragraph (a) of this section and shall be further subject to the provisions of § 23.45(c) (1), (2), (3) above.

§ 23.27 Grant approval limitations.

(a) Area Office approval. Authority for approval of a grant application under this part shall be with the Area Director when the intent, purpose and scope of the grant proposal pertains solely to an Indian tribe or tribes, or to an Indian organization representing an off reservation community, located within that Area Director's administrative jurisdiction.

(b) Central Office approval. Authority for approval of a grant application under this part shall be with the Commissioner when the intent, purpose and scope of the grant proposal pertains to Indian tribe reservation communities or Indian organizations representing different Area office administrative jurisdictions but located within the Commissioner's overall jurisdiction.

(c) Grant approvals under this section shall be subject to availability of funds. These funds will include those which are:

from arbitrary removal from their families and tribal affiliations by establishing procedures to insure that preventative measures are followed in child custody proceedings. This will insure protection of the best interests of Indian children and Indian families by providing assistance and funding to Indian tribes and Indian organizations in the operation of child and family service programs, reflecting the unique values of Indian culture and promoting the stability and security of Indian families. In administering the grant authority for Indian Child and Family Programs it shall be Bureau policy to emphasize the design and funding of programs to promote the stability of Indian families.

Subpart B—Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel

§ 23.11 Notice.

If the identity or location of the parent or Indian custodian and tribe cannot be determined, notice of the pendency of any involuntary child custody proceeding involving an Indian child in a state court shall be given to the Secretary of the Interior by registered mail with return receipt requested. The proper address for transmittal of such information to the Secretary shall be published in the Federal Register and shall be sent to the Chief Justice of the highest court of appeal and the Attorney General of each state. The Secretary shall have 15 days, after receipt, to notify the parent(s), Indian custodian, and the Indian child's tribe, with a copy to the State court. If within the 15 day time period the Secretary is unable to make identification that the child is in fact an Indian, has an Indian parent(s) or Indian custodian, or has a relationship with an Indian tribe, the Secretary shall so notify the State court.

§ 23.12 Designated agent for service of notice.

Any Indian tribe entitled to notice may designate by resolution an agent for service of such notice other than the tribal chairman. The tribe shall send a copy of the resolution to the Secretary. The Secretary shall publish the name and address of the designated agent for service of notice in the Federal Register. The Secretary shall send the name and address of the tribe's designated agent to the Chief Justice of the highest court of appeal and the Attorney General of each state.

§ 23.13 Payment for appointed counsel in state Indian child custody proceedings.

(a) When a state court appoints counsel for an indigent party in an Indian child custody proceeding, for which the appointment of counsel is not authorized under state law, the court shall send written notice of the appointment to the Director of the Bureau of Indian Affairs Area Office that serves the tribe of the child whose custody is at issue. The notice shall include the following:

- (1) Name, address and telephone number of attorney who has been appointed.
- (2) Name and address of client for whom counsel is appointed.
- (3) Relationship of the client to the child.
- (4) Name of Indian child's tribe.
- (5) Copy of the petition or complaint.
- (6) Copy of affidavit of indigency or other document stating the facts on which the court based its determination that the client is indigent.
- (7) Certification by the court that State law makes no provision for appointment of counsel in such proceedings.
- (8) Certification by the court that the client is indigent under the State standards that apply in a juvenile delinquency proceeding.

(b) The Area Director shall certify that the client is eligible to have his or her appointed counsel compensated by the Bureau of Indian Affairs unless:

- (1) The litigation does not involve a child custody proceeding as defined in 25 U.S.C. 1903(1);
- (2) The child who is the subject of the litigation is not an Indian child as defined in 25 U.S.C. 1903(4);
- (3) The client is neither the Indian child who is the subject of the litigation, the Indian child's parent as defined in 25 U.S.C. 1903(9), or the child's Indian custodian as defined in 25 U.S.C. 1903(6);
- (4) The court has abused the discretion accorded it under State law to determine that the client is indigent;
- (5) State law provides for appointment of counsel in such proceedings;
- (6) The notice to the Area Director of appointment of counsel is incomplete, or
- (7) No funds are available for such payments.

(c) No later than 15 days after receipt of the notice of appointment of counsel, the Area Director shall notify the court, the client and the attorney in writing whether the client has been certified as eligible to have his or her attorney fees and expenses paid by the Bureau of Indian Affairs. In the event that certification is denied, the notice shall include written reasons for that decision

together with a statement that the Area Director's decision may be appealed to the Commissioner of Indian Affairs under the provisions of 25 CFR Part 2.

(d) When determining attorney fees and expenses:

(1) The court shall determine the amount of payments due appointed counsel by the same procedures and criteria it uses in determining the fees and expenses to be paid appointed counsel in juvenile delinquency proceedings.

(2) The court shall submit approved vouchers to the Area Director who certified eligibility for BIA payment, together with the court's certification that the amount requested is reasonable under the State standards and considering the work actually performed in light of the criteria that apply in determining fees and expenses for appointed counsel in juvenile delinquency proceedings.

(e) The Area Director shall authorize the payment of attorney fees and expenses in the amount requested in the voucher required unless:

(1) The court has abused its discretion under State law in determining the amount of the fees and expenses; or

(2) The client has not previously been certified as eligible under paragraph (c) of this section.

(f) No later than 15 days after receipt of a payment voucher the Area Director shall send written notice to the court, the client and the attorney stating the amount of payment, if any, that has been authorized. If the payment has been denied or the amount authorized is less than the amount requested in the voucher, the notice shall include a written statement of the reasons for the decision together with a statement that the decision of the Area Director may be appealed to the Commissioner under the procedures of 25 CFR Part 2.

Subpart C—Grants to Indian Tribes and Indian Organizations for Indian Child and Family Programs

§ 23.21 Eligibility requirements.

The governing body of any tribe or tribes, or any nonprofit Indian organization, including multi-service Indian centers, may apply for a grant under this part.

§ 23.22 Purpose of grants.

(a) Grants are for the purpose of the establishment and operation of Indian child and family service programs. Examples in this specific regard are as follows:

- (1) Operation and maintenance of facilities for the counseling and

provided for in the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93-502; 88 Stat. 1561).

§ 23.43 Matching share.

(a) Specific Federal laws notwithstanding, grant funds provided under this part may be used as matching share for any other Federal or non-Federal programs which contribute to the purposes specified in § 23.22.

(b) Superintendents, Area Directors, and their designated representatives will, upon tribal or Indian organization request, assist in obtaining information concerning other Federal agencies with matching fund programs and will, upon request, provide technical assistance in developing applications for submission to those Federal agencies.

§ 23.44 Performing personal services.

Any grant provided under this part may include provisions for the performance of personal services which would otherwise be performed by Federal employees.

§ 23.45 Penalties.

If any officer, director, agent, or employee of, or connected with, any recipient of a grant, subgrant, contract or subcontract under this part, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, he or she may be subject to penalties as provided in 18 U.S.C. 1001.

§ 23.46 Fair and uniform services.

Any grant provided under this part shall include provisions to assure the fair and uniform provision by the grantee of services and assistance to all Indians included within or affected by the intent, purpose and scope of that grant.

Subpart E—Grant Revision, Cancellation or Assumption

§ 23.51 Revisions or amendments of grants.

(a) Request for budget revisions or amendments to grants awarded under this part shall be made as provided in § 276.14 of this chapter.

(b) Requests for revisions or amendments to grants provided under this part, other than budget revisions referred to in paragraph (a) of this section, shall be made to the Bureau officer responsible for approving the grant in its original form. Upon receipt of a request for revisions or amendments to grants, the responsible Bureau officer

shall follow precisely the same review procedures and time specified in § 23.29.

§ 23.52 Assumption.

(a) When the Bureau cancels a grant for cause as specified in § 276.15 of this chapter, the Bureau may assume control or operation of the grant program, activity or service. However, the Bureau shall not assume a grant program, activity or service that it did not administer before tribal grantee control unless the tribal grantee and the Bureau agree to the assumption.

(b) When the Bureau assumes control or operation of a grant program cancelled for cause, the Bureau may decline to enter into a new grant agreement until satisfied that the cause for cancellation has been corrected.

Subpart F—Hearings and Appeals

§ 23.61 Hearings.

Hearings referred to in § 276.15 of this chapter shall be conducted as follows:

(a) The grantee and the Indian tribe(s) affected shall be notified in writing, at least 10 days before the hearing. The notice should give the date, time, places, and purpose of the hearing.

(b) A written record of the hearing shall be made. The record shall include written statements submitted at the hearing or within 5 days following the hearing.

(c) The hearing will be conducted on as informal a basis as possible.

§ 23.62 Appeals from decision or action by Superintendent.

(a) A grantee may appeal any decision made or action taken by a Superintendent under this part. Such appeal shall be made to the Area Director as provided in Part 2 of this chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 23.63 Appeals from decisions or action by Area Director.

(a) A grantee may appeal any decision made or action taken by an Area Director under this part. Such appeal shall be made to the Commissioner as provided in Part 2 of this chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 23.64 Appeals from decision or action by Commissioner.

(a) A grantee may appeal any decision made or action taken by the Commissioner under this part only as provided in Part 2 of this chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 23.65 Failure of agency or area office to act.

Whenever a Superintendent or Area Director fails to take action on a grant application within the time limits established in this part, the applicant may at its option, request action by the next higher Bureau official who has approval authority as prescribed in this part. In such instances, the Superintendent or Area Director who failed to act shall immediately forward the application and all related materials to that next higher Bureau official.

Subpart G—Administrative Requirements

§ 23.71 Uniform administrative requirements for grants.

Administrative requirements for all grants provided under this part shall be those prescribed in Part 276 of this chapter.

Subpart H—Administrative Provisions

§ 23.81 Recordkeeping and information availability.

(a) Any state court entering a final decree or adoptive order for any Indian child shall provide the Secretary of the Interior within 30 days a copy of said decree or order, together with any information necessary to show:

(1) Name of the child and the tribal affiliation of the child;

(2) Names and addresses of the biological parents and the adoptive parents;

(3) Identity of any agency having relevant information relating to said adoptive placement.

To assure and maintain confidentiality where the biological parent(s) have by affidavit requested their identity remain confidential, a copy of such affidavit shall be provided the Secretary. Such information, pursuant to Sec. 301(a) of the Act, shall not be subject to the Freedom of Information Act (5 U.S.C. 552) as amended. The Secretary shall insure the confidentiality of such information is maintained. The proper address for the emittal of information required by Sec. 301(a) of the Act to the Secretary shall be published in the *Federal Register* and shall be sent to the Chief Justice of the highest court of Appeal and the Attorney General of each state. In some states, a state agency has been designated to be repository for all state court adoption information. Where such a system is operative, there is no objection to that

(1) Directly appropriated for implementation of this Act. Distribution to approved applicants of these appropriated and available funds will be based upon the ratio of the number of Indian children under age 18 to be served under a specific proposal to the number of all Indian children under age 18 nationally. This is to insure insofar as possible that all approved applicants receive a proportionally equitable share sufficient to fund an effective program. This formula will be published as a Federal Register notice.

(2) Appropriated under other Acts for Bureau programs which are related to the purposes prescribed in § 23.22.

§ 23.28 Submitting application.

(a) *Agency Office.* An application for a grant under this part for an on or near reservation program shall be initially submitted to the appropriate Superintendent for review and recommendation as prescribed in § 23.29.

(b) *Area Office.* An application for a grant under this part for an off reservation program shall be initially submitted to the appropriate Area Director for review and action as prescribed in § 23.31.

§ 23.29 Agency office review and recommendation.

(a) Recommendation for approval or disapproval of a grant under this part shall be made by the Superintendent when the intent, purpose and scope of the grant proposal pertains to or involves an Indian tribe or tribes located within that Superintendent's administrative jurisdiction.

(d) Upon receipt of an application for a grant under this part, the Superintendent shall:

(1) Acknowledge in writing receipt of the application within 10 days of its arrival at the Agency Office.

(2) Review the application for completeness of information and promptly request any additional information which may be required to make a recommendation.

(3) Assess the completed application for appropriateness of purpose as prescribed in § 23.22, and for overall feasibility.

(4) Inform the applicant, in writing and before any final recommendation, of any special problems or impediments which may result in a recommendation for disapproval; offer any available technical assistance required to overcome such problems or impediments; and solicit the applicant's written response.

(5) Recommend approval or disapproval following full assessment of the completed application and forward the application and recommendation to the Area Director for further action.

(6) Promptly notify the applicant in writing as to the final recommendation. If the final recommendation is for disapproval, the Superintendent will include in the written notice to the applicant the specific reasons therefor.

(7) In instances where a joint application is made by tribes representing more than one Agency Office administrative jurisdiction, copies of the application shall be provided by the applicants to each involved Superintendent for review and recommendation as prescribed in this section.

§ 23.30 Deadline for agency office action.

Within 30 days of receipt of an application for a grant under this part, the Superintendent shall take action as prescribed in § 23.29. Extension of this deadline will require consultation with and written consent of the applicant.

§ 23.31 Area office review and action.

(a) Upon receipt of an application for a grant requiring Area Office approval, the Area Director shall:

(1) Review the application following applicable review procedure prescribed in § 23.29.

(2) Review the Superintendent's recommendation as pertains to the application.

(3) Approve or disapprove the application.

(b) In instances where a joint application is made by tribes representing more than one Area Office administrative jurisdiction, the Area Director shall add his recommendation for approval or disapproval to that of the Superintendent and shall forward the application and recommendations to the Commissioner for further action.

(c) Upon taking action as prescribed in paragraph (a) or (b) of this section, the Area Director shall promptly notify the applicant in writing as to the action taken. If the action taken is disapproval or recommendation for disapproval of the application, the Area Director will include in the written notice the specific reasons therefor.

§ 23.32 Deadline for Area office action.

Within 30 days of receipt of an application for a grant under this part, the Area Director shall take action as prescribed in § 23.31. Extension of this deadline will require consultation with and written consent of the applicant.

§ 23.33 Central office review and decision.

Upon receipt of an application for a grant requiring Central office approval, the Commissioner shall:

(a) Review the application following the applicable review procedures prescribed in § 23.29.

(b) Review Agency and Area office recommendations as pertain to the application.

(c) Approve or disapprove the application.

(d) Promptly notify the applicant in writing as to the approval or disapproval of the application. If the application is disapproved, the Commissioner will include in the written notice the specific reasons therefor.

§ 23.34 Deadline for central office action.

Within 10 days of receipt of an application for a grant under this part the Commissioner shall take action as prescribed in § 23.33. Extension of this deadline will require consultation with and written consent of the applicant.

§ 23.35 Grant execution and administration.

(a) Grants approved pursuant to § 23.27(b) shall be executed and administered at the Central Office level. *Provided*, That the Commissioner may designate in Area office to execute or administer such a grant.

§ 23.36 Subgrants and subcontracts.

The grantee may make subgrants or subcontracts under this part: *Provided*, That such subgrants or subcontracts are for the purpose for which the grant was made and that the grantees retains administrative and financial responsibility over the activity and the funds.

Subpart D—General Grant Requirements

§ 23.41 Applicability.

The general requirements for grant administration in this part are applicable to all Bureau grants provided to tribal governing bodies and to Indian organizations under this part, except to the extent inconsistent with an applicable Federal statute or regulation.

§ 23.42 Reports and availability of information to Indians.

Any tribal governing body or Indian organization receiving a grant under this part shall make information and reports concerning that grant available to the Indian people which it serves or represents. Access to these data shall be requested in writing and shall be made available within 10 days of receipt of that request, subject to any exceptions

agency assuming reporting responsibilities for the purpose of this Act.

(b) The Division of Social Services, Bureau of Indian Affairs is authorized to receive all information and to maintain a central file on all state Indian adoptions. This file shall be confidential and only designated persons shall have access to it. Upon the request of the adopted Indian individual over the age of eighteen, the adoptive foster parents of an Indian child, or an Indian tribe, the Division of Social Services shall disclose such information as may be necessary for enrollment or determining any rights or benefits associated with membership. The Chief Tribal Enrollment Officer of the Bureau of Indian Affairs is authorized to disclose enrollment information relating to an adopted Indian child, where the biological parents have by affidavit requested anonymity. In such cases, the Chief Tribal Enrollment Officer shall certify to the child's tribe, where the information warrants, that the child's parentage and other circumstances entitle the child to enrollment consideration under the criteria established by said tribe.

Rick Lavin

Deputy Assistant Secretary—Indian Affairs

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DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

Recommended Guidelines for State Courts—Indian Child Custody Proceedings

April 17, 1979.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary, Indian Affairs by 209 DM 8.

In order to facilitate the fullest possible measure of implementation of the Indian Child Welfare Act of 1978, Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C., the following guidelines are provided and recommended for use by State courts in Indian child custody proceedings. The Act does not delegate to the Interior Department the authority to *mandate* procedures for state or tribal courts. Many judges, however, have indicated an interest in learning the views of this Department on how they might best implement the Act. These guidelines have been prepared to respond to those requests for our views.

It is intended that these guidelines will complement those related procedures to be published in 25 CFR Part 13, Tribal Reassumption of Jurisdiction Over Child Custody Proceedings, and also will complement those related procedures to be published in 25 CFR Part 23, Indian Child Welfare Act. Recommended guidelines for use by State courts involved in Indian child custody proceedings are:

(a) Definitions.

(1) "Tribal law or custom" means unwritten or written law or custom of the Indian child's tribe.

(2) "Qualified expert witness" shall be determined by the court. The court should take into consideration (i) a professional person having a substantial education and experience in the area of his or her specialty; (ii) a lay expert witness having 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 community relevant to the Indian child who is the subject of the child custody proceeding; (iii) a member of the child's Indian community who is recognized within the community as an expert in tribal customs as they pertain to family organization and childrearing practices.

(3) "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 which is

vested with authority over child custody proceedings.

(b) Policy.

Proceedings in state courts involving custody of Indian children should follow strict procedures and meet stringent requirements to justify placing Indian children outside of their families or tribal communities.

(c) Determination of child as Indian child.

When the state court determines whether an Indian child is involved in an involuntary child custody proceeding, report on such inquiry should be made a part of the record and should detail the steps taken by the court to discover whether the child is an Indian child. A court should consider as actual or constructive knowledge that the child is an Indian child if:

(1) Any party to the case, Indian tribe, Indian organization or public or private agency informs the court that the child is an Indian child.

(2) Any public or state license agency involved in child protection services or family support has discovered information which suggests that the child is an Indian child.

(3) Any child who is involved in an involuntary proceeding gives the court reason to believe that he or she is an Indian child.

(4) The residence or domicile of the child, his natural parents, or Indian custodian is known by the court to be a predominantly Indian community.

(5) An officer of the court, involved in the proceeding, has knowledge that the child may be an Indian child.

If the court has such actual or constructive knowledge, it should seek independent verification of the information prior to a final determination that the child is an Indian child.

(d) Determination of Indian child's tribe.

(1) Where an Indian child is not enrolled in any tribe and is eligible for membership in more than one tribe, the court is called upon to determine with which tribe the child has more significant contacts. In arriving at such determination, the court should consider, among other things, the following factors:

(i) Length of residence or frequency of other contacts with a particular reservation;

(ii) Child's participation in tribal activities;

(iii) Child's fluency in language of a tribe;

(iv) Previous adjudication with respect to the child by a tribal court;

(v) residence on a reservation by the child's relatives;

(vi) Tribal membership of custodial parent or other Indian custodian; and

(vii) Interest asserted by a tribe in response to the notice given under (e)(2).

(2) The court's determination, together with the basis therefore shall be made part of the record, and notice of it shall be given to all parties as well as to all tribes which received notice under (e)(2).

(3) The tribe with which the child ultimately becomes a member should thereafter be considered the Indian child's tribe for all purposes under the Act and these guidelines.

(e) Notice.

(1) In any involuntary child custody proceeding, the state court should make inquiries to determine if the child involved is a member of an Indian tribe or is eligible for membership in an Indian tribe.

(2) In any involuntary Indian child custody proceeding, notice of the proceeding should be sent to the parent(s) or Indian custodian and the Indian child's tribe by registered mail with return receipt requested. The notice should be written in clear and understandable language and shall include information on:

(i) The name of the Indian child.

(ii) His or her tribal affiliation.

(iii) A copy of the petition, complaint or other document by which the proceeding was initiated.

(iv) The name of the petitioner and the name and address of petitioner's attorney.

(v) A statement of the right of the natural parent or Indian custodian and the Indian tribe to intervene in the proceeding.

(vi) A statement that if the parent or Indian custodian is unable to afford counsel, counsel will be appointed to represent him or her.

(vii) A statement of the right of the natural parent or Indian custodian or Indian child's tribe to have, on request, up to twenty additional days to prepare for the proceedings.

(viii) The location, mailing address and telephone number of the court.

(ix) A statement of the right of a parent or Indian custodian or Indian child's tribe to petition the court for transfer of the proceeding to the child's tribal court.

(x) The potential legal consequences of an adjudication on future custodial rights of the natural parent or Indian custodian.

(f) Extension of time.

A tribe, parent or Indian custodian which received notice from the petitioner of the pendency of a child

custody proceeding has the right, upon request, to be granted up to twenty days from the date upon which the notice was received to prepare for participation in the proceeding.

(g) Request for transfer of proceeding.

A parent or Indian custodian of the Indian child, or the child's tribe, may orally or in writing request the court to transfer the Indian child custody proceeding to the tribal court of the child's tribe. Where no timely request for transfer is made, the state court should hear the proceeding.

(h) Determination on transfer request.

Upon receipt of a request to transfer by a parent or Indian custodian or the tribe, the court must transfer the case unless either parent objects to such transfer, the tribal court declines jurisdiction, or the court determines that good cause to the contrary exists for declining the transfer.

(i) Good cause determination.

Good cause to the contrary should be determined by considering the following circumstances. These guidelines are neither inclusive or exclusive:

(1) The child's biological parents are deceased or unavailable.

(2) An Indian custodian or guardian has not been appointed.

(3) The child has had little or no contact with his Indian tribe, or members of his tribe, for a significant period of time.

(4) The child has not resided on his reservation for a significant period of time.

(5) A child, over twelve years of age, has indicated opposition to the transfer.

Socio-economic conditions and the perceived adequacy of tribal or Bureau social services or judicial systems shall not be considered in a determination that good cause exists.

(j) Tribal court acceptance or declination of transfer.

Any tribal court to which transfer is requested can without reason, decline to accept such transfer.

The tribal court should have 10 days from the receipt of notice of a proposed transfer within which time to accept that transfer. If no acceptance is received by the state court within that time, either orally or in writing, then it should be presumed that the tribal court has rejected the proposed transfer and the state court should proceed to adjudicate the petition.

If the tribal court accepts transfer, the state court should provide the tribal court with all available information on the status of the case.

(k) Access to reports.

Parents or Indian custodians or tribes who are party to a child custody

proceeding under state law have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(1) Child and family services requires prior to commencement of the proceedings.

Any party petitioning a state court for foster care placement or termination of parental rights to an Indian child must demonstrate to the court that prior to the commencement of the proceeding, active efforts have been made to prevent breakup of the Indian family. These efforts should take into account the prevailing social and cultural conditions and way of life in the Indian community.

(m) Standards of evidence in cases involving removal and placement of Indian children in involuntary proceedings.

The court may not issue an order effecting a foster care placement of an Indian child unless clear and convincing evidence is presented including testimony of qualified expert witnesses which clearly reflects that the child's continued custody with the child's parents or Indian custodian is likely to result in serious emotional or physical damage to the child.

The court may not order a termination of parent rights unless that determination is supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(n) Execution of voluntary consent to foster care placement or to termination of parental rights.

A valid consent must be executed in writing and recorded before a judge of a court of competent jurisdiction. A certification of the court must accompany any consent and must certify that the terms and consequences of the consent were explained in detail and in the language of the parent or Indian custodian, if English is not the primary language, and were fully understood by the parent or Indian custodian.

(o) Content of consent.

(1) Any such consent should contain the name and birthdate of the Indian child, the name of the Indian child's tribe, any identifying number or other indication of the child's membership in the tribe, if any, and the name and address of the consenting parent or Indian custodian.

(2) A consent to foster care placement should contain, in addition to the information specified in (1), the name

and address of the person or entity by or through whom the placement was arranged, if any, or the name and address of the prospective foster parents, if known at the time.

(3) A consent to termination of parental rights or adoption should contain, in addition to the information specified in (1), the name and address of the person or entity by or through whom any preadoptive or adoptive placement has been or is to be arranged.

(p) Withdrawal of consent to foster care placement.

Where a parent or Indian custodian has consented to a foster care placement under State law, such consent may be withdrawn at any time by filing, in the court where the consent was executed and filed, an instrument executed by the parent or Indian custodian. When a parent or Indian custodian withdraws consent to foster care placement, the child should as soon as is practicable, be returned to that parent or Indian custodian.

(q) Withdrawal of consent to adoption.

A consent to termination of parental rights or adoption may be withdrawn by the parent at any time prior to entry of a final decree of voluntary termination or adoption, by filing in the court where the consent was filed an instrument executed under oath by the parent stipulating his or her intention to withdraw such consent. The clerk of the court where the withdrawal of consent is filed should promptly notify the party by or through whom any preadoptive or adoptive placement has been arranged of such filing, and that party should insure the return of the child to the parent, as soon as is practicable.

(r) Petition to vacate adoption decree.

(1) Within two years after a final decree of adoption of an Indian child by a state court, or within any longer period permitted by the law of the state, a parent who executed a consent to termination of parental rights or adoption of that child, may petition the court in which the final adoption decree was entered to vacate the decree and revoke the consent on the grounds that such consent was obtained by fraud or duress.

(2) Upon the filing of such petition, the court should give notice thereof to all parties to the adoption proceeding, and should proceed to hold a hearing on the petition. Where the court finds that the parent's consent was obtained through fraud or duress, it must vacate the decree of adoption and order the consent revoked, and order the child returned to the parent.

(s) Adoptive placement.

(1) In any adoptive placement of an Indian child under state law, a preference must be given, absent good cause to the contrary, to placement of the child with:

(i) A member of the child's extended family;

(ii) Other members of the Indian child's tribe; or

(iii) Other Indian families, including families of single parents; in that order.

(2) The Indian child's tribe may establish a different order of preference by resolution. That order of preference must be followed as long as the placement is the least restrictive and most appropriate to meet the needs of the child.

(t) Foster care or preadoptive placement.

In any foster care or preadoptive placement of an Indian child:

(1) The child must be placed in the least restrictive setting which

(i) Most approximates a family

(ii) In which his special needs may be met; and

(iii) Which is in reasonable proximity to his or her home

(2) Preference must be given in the following order, absent good cause to the contrary, to placement with:

(i) A member of the Indian child's extended family;

(ii) A foster home, licensed, approved or specified by the Indian child's tribe, whether on or off the reservation;

(iii) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs;

(3) The Indian child's tribe may establish a different order of preference by resolution, and that order of preference should be followed as long as the criteria enumerated in (1) are met.

(u) Good cause determination.

For purposes of any such foster care, preadoptive, or adoptive placement, a determination of good cause to the contrary for such placement in accord with the preferences set out above should consider:

(1) the requests of the biological parents, or the child when the child is of sufficient age;

(2) the special needs of the child—including educational, emotional, cultural, physical, and medical needs;

(3) the availability of suitable families for placement after a diligent search has been completed.

(v) Maintenance of records.

The state should maintain records, in a single location, of every foster care, preadoptive and adoptive placement of Indian children by courts of that state. The records of any such placement must be made available at any time, upon request, to the child's tribe or to the Secretary. The records should contain, at a minimum, the petition of complaint, all substantive orders entered in the proceeding, and the complete record of the placement determination.

(w) Notice of change in child's status.

Whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parent has voluntarily consented to the termination of his parental rights to the child, notice by the court or an agency authorized by the court should be given to the child's biological parent or prior Indian custodian. They should be informed of their right to petition for return of custody of the child.

(x) Adult adoptee rights.

Upon application by an Indian individual who has reached age 18 and who was the subject of an adoptive placement, the court which entered the final decree must inform such individual of the tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights flowing from the individual's tribal relationship.

(y) Emergency removal of child.

(1) Whenever an Indian child is removed from the physical custody of its parent or Indian custodian pursuant to the emergency removal or custody provisions of state law, the state authority, agency or official or the state court should immediately cause an inquiry to be made as to the residence or domicile of such Indian child.

(2) No later than the time within which, under state law, the state authority, agency or official must obtain a court order authorizing continued emergency physical custody, the state authority, agency or official should file an affidavit, as part of such emergency removal proceeding or otherwise, containing the following information:

(i) The name, age and last known address of the Indian child;

(ii) The name and address of the child's parent and Indian custodian if any. If such persons are unknown, a detailed explanation of what efforts have been made to locate the child's parent and Indian custodian, if any, should be provided;

(iii) Whether the residence of the parents, Indian custodian or child is within a reservation and which reservation;

(iv) The tribal affiliation of the child and the parent or Indian custodian;

(v) A specific and detailed account of the circumstances which led the state authority, agency or official to conclude that the child would suffer imminent physical damage or harm.

(vi) The specific actions that the state authority, agency or official is taking or has taken to secure the restoration of the child to his parent or Indian custodian, including the services provided, or to transfer the child to the jurisdiction of the appropriate Indian tribe.

(3) If the Indian child is not restored to its parent or Indian custodian, or if jurisdiction is not transferred to the appropriate Indian tribe, the state authority, agency or official must commence a state court proceeding for foster care placement as soon as the imminent physical damage or harm to the child which resulted in the emergency removal no longer exists.

(z) State-tribal agreements.

States and Indian tribes may enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings.

These agreements may include informal transfer procedures on a case-by-case basis between state and tribal courts in those cases where all parties involved in the court proceeding, including parents, Indian custodian and Indian child if he or she is of sufficient age, express a preference in the adjudication process to transfer the proceedings to conclude that the tribal court can best serve the needs of the Indian child. The geographical proximity of the Indian child and family residence to the Indian child's reservation should be considered in making the transfer agreement for the provision of services.

Rick Lavis,

Deputy Assistant Secretary—Indian Affairs.

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