# Oneida Business Committee Agenda Request

**1. Meeting Date Requested:** 11 / 23 / 16

**2. General Information:**

Session: ☒ Open ☐ Executive - See instructions for the applicable laws, then choose one:

Agenda Header: Reports

☐ Accept as Information only

☒ Action - please describe:

Approval needed

**3. Supporting Materials**

☒ Report ☐ Resolution ☐ Contract

☐ Other:

1. 3.

2. 4.

☐ Business Committee signature required

**4. Budget Information**

☒ Budgeted - Tribal Contribution ☐ Budgeted - Grant Funded ☐ Unbudgeted

**5. Submission**

Authorized Sponsor / Liaison: Lisa Summers, Tribal Secretary

Primary Requestor/Submitter: Dale Powless, Chair Child Protective Board
Your Name, Title / Dept. or Tribal Member

Additional Requestor:
Name, Title / Dept.

Additional Requestor:
Name, Title / Dept.

# Oneida Business Committee Agenda Request

**6. Cover Memo:**

Describe the purpose, background/history, and action requested:

Requesting approval for 4th quarter report for the Oneida Child Protective Board.

1) Save a copy of this form for your records.

2) Print this form as a *.pdf *OR* print and scan this form in as *.pdf.

3) E-mail this form and all supporting materials in a **SINGLE** *.pdf file to: BC_Agenda_Requests@oneidanation.org

Oneida Child Protective Board Quarterly Report
For Oneida Business Committee
Period: July, August and September 2016
Fourth Quarter report due: November 15, 2016

## ONEIDA CHILD PROTECTIVE BOARD

Dale Powless, Chairman
Lois Strong, Vice Chair
Jeanette Ninham, Secretary
Beverly Anderson, Member
Wesley Martin, Member
Carol Silva, Member
Melinda K. Danforth, Member
Lisa Summers, OBC Liaison

**MISSION:** To secure a stable environment that includes the physical, mental, cultural and financial well-being of Oneida children.

**PURPOSE:** In accordance with the Indian Child Welfare Act, 25 U.S.C. 1901, etseq. , the purpose of the Board is to protect the best interest of Oneida children and to promote the stability and security of Oneida families. When placements of such children in foster or adoptive homes or facilities are necessary, these homes must reflect the unique values of Indian culture. For this purpose, the Board may intervene in federal, state, and county courts concerning the following proceedings: foster care placement, termination of parental rights, pre-adoptive placement, adoptions and out of home placements.

## MEETING REQUIREMENTS

Oneida Child Protective Board meets weekly and by special requests from family members, counties departments, or community members.

## MINUTES

Due to confidentiality nature of minors, all minutes are kept in locked fireproof file cabinet, in a locked room within the building.

## FINANCIALS

The OCPB is on schedule with meeting our financial goals.

## EDUCATION/TRAINING

- ICW Directors Meeting on July13th, 2016 @ the Mole Lake Casino in Mole Lake, Wisconsin.
- Ho Chunk Nations Family Wellness Court on July 27th, 2016 in Green Bay, WI.
- Strategies for Treating Anger & Aggression in Children & Adolescents on July 29th, 2016 @ the Radisson Paper Valley Hotel in Appleton, Wisconsin.
- BIA Training on Final ICWA Rule on August18th, 2016 @ the Double Tree in St. Paul, Minnesota.

Oneida Child Protective Board Quarterly Report
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## GOALS AND OBJECTIVES

- Facilitate appropriate training opportunities for OCPB members for certificate/report of completion per OCPB Bylaws.
- Develop working relationship and improve judicial relationships through meetings with tribal, state, and county personnel.
- Work in accordance with the Oneida Law Office and Tribal Social services to enforce the provisions of the Indian Child Welfare Act.

## COMMENTS

- Has attended state court hearings in support of placement of Oneida children and their families.
- Actively heard, discussed and recommended the best solution for cases that came before us. The following chart demonstrates the approximate number of cases for the quarter:
- Worked with the ICW staff to provide a brochure to have available for families. This information should be provided by the Adoption agency, but this is not always the case. Therefore we feel it is imperative they have knowledge since there is a timeline for applying for these funds. (see attachment)
- Bureau of Indian Affairs Final Rule: Indian Child Custody Proceedings going into effect on December 12th, 2016 (see attachment)

Oneida Child Protective Board Quarterly Report
For Oneida Business Committee
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| ***July*** | |
|---|---|
| *On-Going Cases* | *22* |
| *New Cases* | *3* |
| *Relative Placement* | *16* |
| *Future Adoptive Placement* | - |
| *Treatment Facility Placement* | - |
| *Shelter Care Placement* | - |
| *Foster Care Placement* | *5* |
| *Parent Placement* | *4* |
| *Fictive Kin* | - |
| *Guardianship* | *7* |
| *Kinship* | - |

| ***August*** | |
|---|---|
| *On-Going Cases* | *24* |
| *New Cases* | *2* |
| *Relative Placement* | *16* |
| *Future Adoptive Placement* | - |
| *Treatment Facility Placement* | - |
| *Shelter Care Placement* | - |
| *Foster Care Placement* | *7* |
| *Parent Placement* | *3* |
| *Fictive Kin* | - |
| *Guardianship* | *2* |
| *Kinship* | - |

| ***September*** | |
|---|---|
| *On-Going Cases* | *27* |
| *New Cases* | *11* |
| *Relative Placement* | *23* |
| *Future Adoptive Placement* | *1* |
| *Treatment Facility Placement* | - |
| *Shelter Care Placement* | - |
| *Foster Care Placement* | *12* |
| *Parent Placement* | *3* |
| *Fictive Kin* | - |
| *Guardianship* | *3* |
| *Kinship* | *2* |

## Local Adoption Resources

If you have more questions you may contact:

**Lutheran Social Services of WI & Upper MI;** 3003 A N. Richmond Street, Appleton 54911 Phone: 920 -730-1322

**Family Services Post-Adoption Resource Center;** 300 Crooks Street, Green Bay Phone: 920-436-4360 x1264

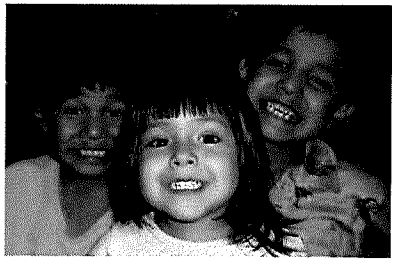
**Foster Care and Adoption Resource Center,** 6682 West Greenfield Avenue, Suite 310 Milwaukee WI 53214 Phone: 414-475-1246

Oneida Social Services
2640 West Point Road
Green Bay, WI 54304

Child Placement Coordinator
Phone: 920-490-3822
Fax: 920-90-3799
Toll Free 1-888-490-2457


*Oneida Family Support Services*

# *A Guide to Adopting a Native American Child*



Oneida Social Services

Telephone: 920-490-3700

# *Introduction to Adoption*

The following guide is a very brief introduction to adoption resources and information.

For more information and guidance, please contact: Foster Care and Adoption Resource Center at 414-475-1246

or visit:
www.wifostercareandadoption.org/

**Financial Adoption Support:**

- Eligibility Requirement: Child must be Native American

- The adoption social worker (through the licensed adoption agency you choose) will submit the necessary Adoption Assistance application materials to the Department of Children and Families for eligibility determination.

- Adoption assistance should be requested before the adoption becomes final.

- Benefits are not income based

- A monthly financial payment to assist in meeting financial demands-not to exceed $2,000

- Adoption Assistance also includes Medical Assistance eligibility through Wisconsin's Medicaid Program. If a family's health plan fails to provide coverage, the Wisconsin Medicaid Program may cover some necessary health care costs.

- Adoption Assistance may continue until 18 or 19 years & child is enrolled as a full-time high school student.

To learn more about the Adoption Assistance Program, visit: wifostercareandadoption.org/ or call: 414-475-1246

**Tax Credit:**

- Adoptive parents are also eligible for a one time Federal Adoption Tax Credit (based on income). Speak to your tax consultant about this for more information or visit: https://www.nacac.org/taxcredit/taxcredit.html or call: 651-644-3036

**Adoption Cost Reimbursement:**

- The costs incurred during the adoptions process (fees, court costs, attorney fees, etc.) may be reimbursed up to a maximum of $2000 through adoption assistance. This claim must be submitted within two years from the date of the adoption finalization.

- The form to complete and return address can be obtained by asking your adoption worker or by calling 866-666-5532.

***Oneida Nation Social Services does **not** process adoptions, but does assist with Kinship and Foster Care Services

# Active Efforts

U.S. Department of the Interior, Bureau of Indian Affairs
Final Rule: Indian Child Custody Proceedings
25 CFR § 23.2, § 23.120

### What are active efforts?

Active efforts are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family.

### What must active efforts involve?

Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent(s) or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.

### How should active efforts be provided?

To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe.

### Are active efforts tailored to each case?

Yes, active efforts are to be tailored to the facts and circumstances of the case.

### When are active efforts required?

The active efforts requirement applies in any foster-care or termination-of-parental-rights proceeding involving an "Indian child" (*see* 25 CFR 23). The court must conclude, prior to ordering an involuntary foster-care placement or termination of parental rights, that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

### Must active efforts be documented?

Yes, the court will require active efforts to be documented in detail in the record.

**Active efforts may include, for example:**

(1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;

(2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;

(3) Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;

(4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;

(5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;

(6) Taking steps to keep siblings together whenever possible;

(7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

(8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;

(9) Monitoring progress and participation in services;

(10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;

(11) Providing post-reunification services and monitoring.

**IMPORTANT NOTE:** This quick reference guide is not comprehensive and highlights only some of the requirements of the statute at 25 U.S.C 1901 *et seq.* and regulations at 25 CFR 23. To the extent there are any discrepancies, the statute and regulations govern.

# Quick Reference Sheet for State Court Personnel

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

## All Child Custody Proceedings

**Inquiry.** Ask in every child custody proceeding (emergency, involuntary, and voluntary): *"Do you know, or is there a reason to know, the child is an 'Indian child' under the Indian Child Welfare Act (ICWA)?"*

An "**Indian child**" is:

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

**Indications of "reason to know"** include—

- Anyone, including the child, tells the court the child is an Indian child or there is information indicating the child is an Indian child;
- The domicile or residence of the child or parent/Indian custodian is on a reservation or in an Alaska Native village;
- The child is, or has been, a ward of Tribal court; or
- Either parent or the child has an ID indicating Tribal membership.

Whether a child is an "Indian child" does not consider factors outside the definition, such as:

- Participation of the parents or child in Tribal activities;
- Relationship between the child and his or her parents;
- Whether the parent ever had custody of the child, or
- The child's blood quantum.

**Pending verification.** If there is reason to know the child is an Indian child, treat the child as an Indian child, unless and until it is determined on the record that the child is not an "Indian child."

**Verification with Tribe and identification of "Indian child's Tribe."** Confirm, on the record, that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible), to verify whether the child is a member **or** a biological parent is a member and the child is eligible. Determine **the Indian child's Tribe** for purposes of the Act.

**Determine jurisdiction.** The Indian child's Tribe has exclusive jurisdiction over the case if the Indian child's domicile or residence is on a reservation where the Tribe exercises exclusive jurisdiction over child-custody proceedings **or** the child is a ward of Tribal court. A parent or Indian custodian and the Indian child's Tribe may request a transfer of a foster-care or termination-of-parental-rights (TPR) proceeding to Tribal jurisdiction, at any stage and at any time, orally on the record or in writing. Upon such a request, the court **must** transfer unless:

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

The reasons for denial must be on the record.

A determination that good cause exists to deny transfer may **not** include the considerations listed at § 23.118(c).

**Placement preferences.** ICWA's placement preferences apply in any preadoptive, adoptive, or foster-care placement (voluntary or involuntary) of an Indian child.[1] Or, if the Indian child's Tribe has established, by resolution, a different order of preference, the Tribe's placement preferences apply instead. Deviations from the placement preferences are permitted only for *good cause*. Good cause must be on the record and should be shown by clear and convincing evidence and be based only on one or more of the considerations listed at § 23.132(c).

A placement may not depart from the preferences:

- Based on the socioeconomic status of any placement relative to another
- Based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

[1] *See* ICWA's placement preferences at 25 U.S.C. 1915 or 25 CFR §§ 23.129-131.



**IMPORTANT NOTE:** This quick reference guide is not comprehensive and highlights only some of the requirements of the statute at 25 U.S.C 1901 *et seq.* and regulations at 25 CFR 23. To the extent there are any discrepancies, the statute and regulations govern.

## Involuntary Proceedings

**Notice.** The record must include proof that clear and understandable notice was provided to the parents (and/or Indian custodian, if any) and Tribe, by registered or certified mail, return receipt requested, of the involuntary proceeding. No foster-care-placement or TPR proceeding may be held until at least **10 days after receipt** of the notice of that particular proceeding (with extensions allowed at option of parent or Tribe).

**Active Efforts.** Before ordering an involuntary foster care placement or TPR, the court must conclude that active efforts have been made to prevent the breakup of the Indian family and those efforts have been unsuccessful. Active efforts must be documented in detail in the record.

> **Active efforts** are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. *See* § 23.2 for the more expansive definition and examples.

**Standards of Evidence.**

Foster-care placement and TPR may be ordered only if there is:

- ***Clear and convincing evidence*** *(for foster-care placement) or* ***evidence beyond a reasonable doubt*** *(for TPR)*,
- Including the testimony of qualified expert witness(es),
- That the child's continued custody by the child's parent or Indian custodian is likely to result in "serious emotional or physical damage" to the child.

The evidence must show a ***causal relationship*** between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding.

> Without a causal relationship, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself meet the standard of evidence.

The ***qualified expert witness*** must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe. The qualified expert witness may not be the social worker regularly assigned to the Indian child.

## Emergency Proceedings

An emergency removal or placement is any removal/placement of an Indian child under State law without the full suite of ICWA protections, regardless of the label used for the removal or placement; the emergency removal or placement must terminate immediately when the removal or placement is no longer necessary to prevent "imminent physical damage or harm" to the child and **cannot last more than 30 days** unless the court makes the determinations at § 23.113(e). An emergency proceeding can be terminated by one or more of the following actions:

(1) Initiation of a child-custody proceeding subject to the provisions of ICWA;
(2) Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or
(3) Restoring the child to the parent or Indian custodian.

## Voluntary Proceedings

A voluntary proceeding must be truly voluntary (of the parent or custodian's free will, without a threat of removal by a State agency). The provisions summarized in "All Child Custody Proceedings" on p. 1 of this guide (including, e.g., placement preferences) apply. In addition, the court must ensure the safeguards for the parent or custodian's consent and withdrawal of consent are followed. *See* §§ 23.125 - 23.128.



**IMPORTANT NOTE:** This quick reference guide is not comprehensive and highlights only some of the requirements of the statute at 25 U.S.C 1901 *et seq.* and regulations at 25 CFR 23. To the extent there are any discrepancies, the statute and regulations govern.

# Quick Reference Sheet for Voluntary Proceedings

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

**Voluntary proceedings.** A proceeding is "voluntary" only if either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to the placement for the Indian child, or if the proceeding is for voluntary termination of parental rights. The Indian Child Welfare Act (ICWA) and the regulations include provisions that apply to voluntary proceedings (highlighted by this guide).

The only voluntary placement to which ICWA does **not** apply to is a voluntary placement where the parent or Indian custodian can regain custody of the child **upon demand** – meaning simply upon verbal request, without any formalities or contingencies.

**Inquiry.** At the outset of the proceeding, the court will ask whether you know, or if there is a reason to know, the child is an "Indian child" under ICWA.

An "**Indian child**" is:

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

**Indications of "reason to know"** include—

- Anyone, including the child, tells the court the child is an Indian child or there is information indicating the child is an Indian child;
- The domicile or residence of the child or parent/Indian custodian is on a reservation or in an Alaska Native village;
- The child is, or has been, a ward of Tribal court; or
- Either parent or the child has an ID indicating Tribal membership.

Whether a child is an "Indian child" does not consider factors outside the definition, such as:

- Participation of the parents or the Indian child in Tribal activities;
- Relationship between the Indian child and his or her parents;
- Whether the parent ever had custody of the child, or
- The Indian child's blood quantum.

**Pending verification.** If there is a reason to know the child is an Indian child, the court will treat the child as an Indian child, unless and until it is determined on the record that the child is not an "Indian child" under ICWA.

**Due diligence to identify "Indian child's Tribe" and verify membership/eligibility.** Use due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is a member **or** a biological parent is a member and the child is eligible for membership.

**Effect of a request for anonymity.** A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an "Indian child." If the consenting parent provides a written request for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal and the Tribe receiving information related to this inquiry must keep documents and information confidential.



**IMPORTANT NOTE:** This quick reference guide is not comprehensive and highlights only some of the requirements of the statute at 25 U.S.C 1901 *et seq.* and regulations at 25 CFR 23. To the extent there are any discrepancies, the statute and regulations govern.

**Inquire as to domicile and residence.** The court will look at whether the Indian child's domicile or residence is on a reservation **or** the child is a ward of Tribal court to determine whether the Indian child's Tribe has exclusive jurisdiction.

**Notice.** ICWA and the regulations do not necessarily require notice to the other parent or Tribe, but the Department recommends notice to promote compliance with the placement preferences and stability for the Indian child.

**Placement Preferences.** Seek to identify placements that meet ICWA's placement preferences (or the Indian child's Tribe's placement preferences established by resolution, if applicable). The court will apply the placement preferences in any preadoptive, adoptive, or foster-care placement of an Indian child.

**ICWA's top preferred placement is a member of the Indian child's extended family.**
**For the remaining preferences, see 25 U.S.C. 1915 or 25 CFR §§ 23.129-131.**

The court will allow for deviations of the placement preferences only for *good cause* described on the record. Good cause should be shown by clear and convincing evidence and based on one or more of the considerations at § 23.132(c). Note that:

- A prerequisite to finding good cause based on the *unavailability* of a suitable preferred placement is that a diligent search for suitable preferred placements must have been conducted. The standards for determining whether a placement is *unavailable* must conform to the prevailing social and cultural standards of the Indian community.
- If the Indian child's parent(s) wants to request a placement that departs from the placement preferences, the parent(s) must attest that they have reviewed the placement options, if any, that comply with the order of preference.

A placement may not depart from the preferences:

- Based on the socioeconomic status of any placement relative to another placement
- Based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

**Consent Safeguards.** A parent's or Indian custodian's consent to a voluntary termination of parental rights or to a foster-care, preadoptive, or adoptive placement must be executed in writing, include the contents listed at § 23.126, and be recorded before a court of competent jurisdiction. Prior to accepting the consent, the court must:

- Explain to the parent or Indian custodian the terms and consequences of the consent in detail; and
- Explain to the parent or Indian custodian the limitations on withdrawal of consent listed in § 23.125(b)(2);
- Certify that the terms and consequences of the consent were explained on the record in detail (in the appropriate language) and were fully understood by the parent or Indian custodian.

A consent given prior to, or within 10 days after, the birth of an Indian child is not valid.

**Withdrawal of Consent.** The rule provides information for how a parent may withdraw consent to a voluntary foster-care placement, voluntary termination of parental rights, and voluntary adoption. *See* §§ 23.127 - 23.128. For example, a parent or Indian custodian may withdraw consent to an adoption any time prior to entry of the final adoption decree by filing a written document with the court of otherwise testifying before the court. Additional methods of withdrawing consent may be available under State law.

**Adult Adoptees' Right to Information.** An Indian who has reached age 18 who was the subject of an adoptive placement may apply to the court that entered the final adoption decree for information, and the court 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, which may include Tribal membership, resulting from the individual's Tribal relationship.



**IMPORTANT NOTE:** This quick reference guide is not comprehensive and highlights only some of the requirements of the statute at 25 U.S.C 1901 *et seq.* and regulations at 25 CFR 23. To the extent there are any discrepancies, the statute and regulations govern.

# Quick Reference Sheet for Tribes

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

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

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

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

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

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

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

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

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

**Examples of active efforts include:**

- Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;
- Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe.

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



**IMPORTANT NOTE:** This quick reference guide is not comprehensive and highlights only some of the requirements of the statute at 25 U.S.C 1901 *et seq.* and regulations at 25 CFR 23. To the extent there are any discrepancies, the statute and regulations govern.

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

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

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

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

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

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

> The qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's Tribe.

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

**Right to examine documents.** The rule provides that each party to an emergency proceeding or a foster-care-placement or termination-of-parental-rights proceeding under State law involving an Indian child has a right to timely examine all reports and other documents filed or lodged with the court upon which any decision with respect to such action may be based. In addition, Tribes are sovereign entities that have concurrent jurisdiction over child-custody proceedings, and they should have the ability to review documents relevant to those proceedings. State agencies must share records with Tribal agencies that are parties to child-custody cases as they would other parties and governmental entities.

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

**Right to petition to invalidate an action.** The Indian child's Tribe may petition any court of competent jurisdiction to invalidate an action for foster-care placement or termination of parental rights under State law where it is alleged that 25 U.S.C. 1911, 1912, or 1913 has been violated.

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



**IMPORTANT NOTE:** This quick reference guide is not comprehensive and highlights only some of the requirements of the statute at 25 U.S.C 1901 *et seq.* and regulations at 25 CFR 23. To the extent there are any discrepancies, the statute and regulations govern.