

***Pennsylvania  
Indian Child Welfare  
Handbook***

*Developed By*  
The Pennsylvania Child Welfare Training Program  
University of Pittsburgh, School of Social Work

# Pennsylvania Indian Child Welfare Handbook

The Pennsylvania Child Welfare Training Program is a collaborative effort of the Pennsylvania Department of Public Welfare, University of Pittsburgh, School of Social Work, and the Pennsylvania Children and Youth Administrators established to train direct service workers, supervisors, and administrators in providing social services to abused and neglected children and their families. The Training Program is centrally managed and regionally administered by the University.



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## Section I Introduction

### **About the Handbook**

This handbook has been developed as a way of disseminating information regarding the Indian Child Welfare Act (ICWA) and what it requires of county children and youth agencies and private providers throughout the Commonwealth. It is intended to be used as a quick-reference guide for staff in working with American Indian children and families, and is not a substitute for comprehensive training. Indian Child Welfare is part of Child Welfare and each State has the responsibility to implement best practice within the requirements of law.

The handbook provides historical context for the passage of ICWA, details the major requirements of the Act, includes cultural considerations for agency staff when practicing Indian Child Welfare work, hearing checklists and Tribal contact information.

### **What is the Indian Child Welfare Act?**

The Indian Child Welfare Act, which went into effect in 1978, establishes minimum standards for the handling of child custody cases involving Indian children. Child custody cases for the purposes of ICWA are:

- *Foster care placement;*
- *Termination of parental rights;*
- *Pre adoptive placement or;*
- *Adoptive placement.*

ICWA recognizes the government-to-government relationship that exists between the United States and tribes. ICWA does not govern the actions or practices of tribes. Instead, it honors the authority of tribes to intervene in child welfare matters and provides that Tribal Courts have authority to adjudicate child custody cases involving children of the tribe. Most tribes in the United States now have their own child welfare services.

### **Why is it important in Pennsylvania?**

At one time numerous tribes resided in what we now call Pennsylvania. The Susquehannock, the Erie, the Delaware, the Honniasont and the Shawnee are a few of the tribes that lived within the Commonwealth's borders. Although currently, there are no federally recognized tribes residing in Pennsylvania, many Indians are residents of Pennsylvania. Approximately 50,000 Indian people (American Indian alone or in combination with another race) reside in Pennsylvania<sup>i</sup>. According to the 2000 U.S.

Census, just over 15,000 children under the age 18 are Indian or are Indian in combination with another race<sup>ii</sup>. Some families have been in the area for many generations; other families are from elsewhere in the country. Many are enrolled or eligible for enrollment in tribes. ICWA applies whenever a child who is enrolled or eligible for enrollment in a tribe is involved in a child custody proceeding.

### **Federal Recognition**

Federally recognized tribes have dependent sovereign nation status. This means that they have the authority to govern themselves. Some tribes choose leaders using traditional ways and other tribes have adopted a constitutional way of electing leaders.<sup>iii</sup> In addition, federally recognized tribes are eligible for federal benefits including health care and housing. There are over 550 federally recognized tribes and Native Alaskan villages in the United States. Some 200 more tribes are petitioning for recognition.<sup>iv</sup> Some tribes have lost federal recognition. The Menominee Tribe lost federal recognition in the 1960's through a federal termination program. The program was unsuccessful and the Menominee regained their federal recognition in the 1970's.

## **Section II**

### **Historical Overview**

To understand ICWA, one must understand the historical context in which ICWA was crafted. This historical overview is brief and is not intended to represent a complete history. Its purpose is to assist the reader in understanding major events that precipitated the necessity of ICWA. ICWA was passed in response to information that revealed that Indian children were being removed from their homes and placed in foster care at much higher rates than non-Indian children. Many children were removed from their homes because of a lack of understanding of Indian culture and child rearing practices. In addition, an overwhelming majority of Indian children were being placed with non-Indian caregivers who not only did not understand the culture from which the Indian children came they were unable to maintain the cultural connections.

When the settlers came to America, Indian tribes lived all over the United States in every State. Tribes were pushed from their homes and migrated further west. Conflict occurred as the settlers pushed their way further into the country and from misunderstandings of culture. For example, when the settlers offered Indian tribes trinkets for land, the Indians never realized that they were selling the land. In Indian culture, the creator made the land for all men and animals to use. Land was not bought or sold. Once the settlers began to develop governments, policies regarding Indians were established. Federal policy has flipped from annihilation of Indian tribes and culture to assimilation and somewhere in between.

In 1887, Congress enacted the Dawes Act. The Dawes Act was supposed to protect Indian land. It allowed Indian male heads of family to register to claim 160 acres of reservation land. Smaller allotments were given to single men and orphaned men. In order to register, an Indian had to use a more socially accepted name. His tribal name could not be used. Some of the workers registering Indians under the Dawes Act used the names of their friends and family when registering Indians thereby making it possible to steal the land from the Indians. To determine who was Indian and eligible for the land, the quantum theory was used. Those who could document that they were one half or more Indian were registered on the rolls and given land. Some of the land given to Indians was desert land. Once the reservation land had been divided among the “blooded” Indians, the rest of the reservation land was sold to non-Indians. What was supposed to assimilate and “civilize” the Indians by providing them with property ownership and giving them an acceptable way of living as farmers, further robbed the Indians of their culture and way of life.

The creation of boarding schools was an attempt to mainstream Indians into society. What it did was forcibly remove children from their families and place them far from their homes. They were not allowed to speak their language nor to have or to practice anything that resembled their Indian culture, including their name. This was another attempt to civilize the Indians by “killing the Indian and saving the man”. Richard Henry Pratt ran the first boarding school in an abandoned military barracks in Carlisle. Indian parents who resisted sending their children to boarding schools were denied rations; others had their children removed by force. In 1928, a report commissioned by the Indian Commission brought to the forefront criticism of boarding schools and of government policy regarding Indians. This same report also led to repeal of the Dawes Act. By the 1930’s boarding schools were being closed. But even as the pendulum eventually shifted from assimilation to providing services to assist families, the Indian tribes were not consulted. Someone else who was not Indian determined what was needed and what was best.

At the time of enactment of the Indian Child Welfare Act, Congress laid out a clear statement of fact:

- ❑ “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,
- ❑ That an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by non-tribal 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
- ❑ 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.”

## **Section III Congressional Findings**

### **Congressional Declaration of United States Policy**

When enacted in 1978, the Indian Child Welfare Act was given by Congress the following purpose:

*“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.”*

## **Section IV**

### **Cultural Considerations**

Given that there are over 550 Indian tribes and Alaskan villages, each with unique cultural considerations, this section will give a brief overview of factors that are intrinsic to most Indian tribal cultures. Although the non-Indian worker should bear these considerations in mind when working with an Indian family, the worker should also educate himself when working with a family of a particular tribe. Some families may be very traditional and other families may be less traditional. Each family and each individual within that family should be assessed based in context of their own history, tribal affiliation, connectedness to that tribe and amount of assimilation into the dominant society.

The non-Indian worker should tune into his own personal biases. Most non-Indians have very little exposure to Indians and Indian cultures except for what is portrayed in television, movies, and books of the dominant culture. The non-Indian worker may have pre-determined concepts of what is Indian based on these sometimes inadequate portrayals. Often Indians are depicted in a either a romantic, melodramatic portrayal or an unsophisticated, violent portrayal. In addition to addressing his own personal biases, the worker may also have to tune into biases that the Indian family may have toward the non-Indian worker.

Provided the acrimonious nature of the historic relationship between Indian and non-Indian peoples overall as well as that between the federal government and tribal nations, it is not unusual to find Indian families who are still distrustful of non-Indians and of government agencies. In addition to not making assumptions based on faulty portrayals perpetuated by the dominant society, the worker should also not presume some knowledge enables him to make educated assumptions. The strengths and needs of the Indian family should be understood within the context of tribal culture and not assessed as a result of the context of tribal culture. Admitting a lack of understanding and asking questions could go a long way in engaging a reluctant and suspicious family. A worker might ask if the family has concerns because of the differences in background and culture. By making the cultural difference a topic in the preliminary engagement process, a family may be more willing to discuss feelings of mistrust and suspicion. Addressing the differences in culture early on may lay better foundation for the worker to effectively contract with the family later.

In addition to admitting lack of knowledge and differences in culture, it is important that the non-Indian worker identify and acknowledge feelings of anger, rage, and resentment resulting from the anguish inflicted by attempts to annihilate Indian culture at any cost. It

is difficult for a non-Indian to comprehend the magnitude of what has happened to Indian people. Almost every Indian family has been negatively affected. Tribal lands have been lost, communities destroyed, customs and languages lost and children forever removed from families. The worker should do this without seeming defensive. It does not matter that the worker was not the one to do these things. It is enough that it was done.

The way a family perceives their culture is illustrated in their everyday life. Because Pennsylvania has no federally recognized tribes, workers will not be meeting families on tribal reservations. The family's cultural identity and their extent of assimilation will still be visible in their family customs, their language, their spiritual beliefs, and their relationship to extended family. As in working with any family, a worker cannot assess a family's behavior and actions based on the worker's own culture and experience. For example, a worker may fail to recognize not maintaining eye contact as a sign of politeness if he only evaluates that behavior based on his own culture and experience. It is always important regardless of the culture of the family or the culture of the worker to assess the family based on their cultural norms which may be slightly varied from family to family even within the same tribe.

Most Indian culture recognizes the importance of the extended family. Tribes live as a community in a way that emphasizes sharing and expounds on the greater good of the whole rather than the good of the individual. For example, child-rearing responsibilities may be shared by extended family members in addition to the parents. There may be times as well when extended family members provide the bulk of the child rearing. Children are viewed in typical tribal culture as gifts from the creator. If they are not properly cared for, the creator may choose to take them back. When coupled with Indian philosophy that all things are connected and when the world is unbalanced harmony is disrupted, it makes sense that responsibilities and the basics of life are shared. It would not be unusual for an Indian family to house, feed and clothe extended family members even if they barely have enough for themselves.

For many Indian families, the extended family is the primary support resource. If an Indian family has a connection to their extended family, it would be important to include them in the casework process. Resistance can be reduced when a family sees value and appropriateness in the intervention. The family may value the inclusion of elders or traditional healers. The worker must be sure to recognize and respect that each extended family group has its own rules and ideals. Even if the extended family is not part of the permanency goal for a child, they should be included in the planning making process. For every child regardless of culture it is important to maintain connections to culture and community. Although the tradition of extended family can be a great

resource, the worker must be careful of causing family division in addition to already existing family divisions. As within any family, the worker must recognize and show consideration for the roles of various members as decision makers or advice givers. Many decisions are made with consultation and approval of extended family members.

- ❖ As true in developing any relationship, the worker must employ active listening, communicating concern and acceptance verbally, and non-verbally.
- ❖ The worker's sincerity may be tested. The worker could be assessed verbally and non-verbally using silence and even humor. The worker should not be surprised if the family asks personal questions of the worker.
- ❖ The use of humor is an important part of Indian culture. If the family jokes with the worker it may be an indication of rapport.
- ❖ Pauses and silences during conversation are important. Many Indian people are taught to think carefully through something before responding. Don't rush a response.
- ❖ Another way to build rapport is the use of casual conversation. By taking time to engage in some non-work related conversation the worker establishes who he is as a person.
- ❖ A gentle handshake could be offered as a sign of respect.
- ❖ Extended family members may be present and communicate through a designated person. Don't urge everyone to actively participate.
- ❖ Time kept by the clock may be more important to you than the family.
- ❖ The worker may be offered a beverage and/or food. If refused the family may be very insulted.

This brief overview of cultural considerations is by no way all-inclusive but rather designed to help the worker to begin to appreciate Indian culture and to spark interest in adding to the worker's knowledge base. All tribes, all extended families and all immediate families are unique.

## Section V ICWA BASICS

### When Does ICWA Apply?

***ICWA applies when an Indian child is involved in a child custody proceeding.***

#### **Indian Child**

Person who is:

- Unmarried and;
- Under age 18

And either:

- A member of an Indian tribe or;
- Is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe

#### **Child Custody Proceeding**

*Foster care placement* – any action removing an Indian child from his 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.

*Termination of parental rights* – any action resulting in the termination of the parent-child relationship.

*Pre adoptive placement* – 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.

*Adoptive placement* – the permanent placement of an Indian child for adoption including any action resulting in the final decree of adoption.

#### **When Does ICWA Not Apply**

- A temporary placement arrangement in which the parent or Indian custodian can have the child returned at any time, such as a Voluntary Placement Agreement.
- Custody awarded to a parent as part of a divorce proceeding.
- Most delinquency proceedings.

## Section VI ICWA Terms and Definitions

### **Child custody proceeding --**

*foster care placement* – any action removing an Indian child from his 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;

*termination of parental rights* – any action resulting in the termination of the parent-child relationship;

*pre adoptive placement* – 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

*adoptive placement* – 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.

**Extended family member** – 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.

**Indian** – 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 1606 of title 43.

**Indian child** – 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.

**Indian child's tribe** – (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

**Indian custodian** – 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.

**Indian organization** – any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

**Indian tribe** – 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 1602(c) of title 43.

**Parent** – 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.

**Reservation** – Indian country as defined in section 1151 of title 18 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.

**Secretary** – the Secretary of the Interior.

**Tribal court** – 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.

## Section VII What Does ICWA Mean for Me?

### **Involuntary child custody proceedings**

It is the responsibility of the county children and youth **agency** as the petitioning agency to **notify** the **tribe** when a child custody proceeding (see definitions page 10) involves an Indian child or a child who may be an Indian child.

If the child is not currently a member of the tribe, the county children and youth agency must contact the tribe for determination of the child's membership. Each tribe solely determines membership (for Tribal contact list, see Appendix B).

### **Jurisdiction**

The child's **tribe** has the **right to intervene** at any point in child custody proceedings.

**Tribes** have **jurisdiction** over child custody proceedings of children residing on **reservation**; this may be concurrent with the state (P.L. 280 states tribes may have exclusive jurisdiction). When a Tribal Court has custody of an Indian child, the Indian tribe retains exclusive jurisdiction regardless of where the child lives.

**Tribes** may petition for **transfer** of the child custody proceeding. The juvenile court may have temporary jurisdiction over an Indian child who is temporarily or permanently living off of the reservation. Jurisdiction must be transferred from juvenile court to tribal court upon the petition of the tribe, parent or Indian custodian unless there is good cause to the contrary.

There is no definition for good cause to the contrary. The court will determine if good cause to the contrary exists.

The county children and youth agency must send **notice** by **registered mail**, to the parent, Indian custodian and tribe of pending child custody proceedings in juvenile court (for Tribal contact list, see Appendix B).

**Notice** must **include** the following:

- Child's name;
- Child's tribal affiliation, if known;
- Copy of document or petition which initiates the action;

- County Agency contact information (petitioner) including contact information for county agency attorney;
- A statement informing the parents, Indian Custodian and tribe of their right to intervene;
- A statement that if the parents, Indian Custodian or tribe are unable to afford counsel one will be appointed for them;
- A statement that the parents, Indian custodian or tribe can have up to twenty days to prepare for the proceedings;
- The Court's location, mailing address and telephone number;
- A statement informing the parents; Indian custodian or tribe of the right to request a transfer to tribal Court;
- The potential legal consequences on the rights of the parties if the child is adjudicated dependent; and
- A statement that child custody proceedings should be kept confidential.

If the **identity** or location of the parent or Indian custodian and the tribe is **unknown**, the notice shall be given to the **Secretary of the Interior**, 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.

**All parties** have the right to examine all reports or documents related to the case.

The court must be satisfied that **active efforts** have been made to provide remedial and rehabilitative services to prevent family breakup and that these efforts have failed.

**A court order for placement** must be determined by **clear and convincing evidence** including qualified expert witness testimony that continued custody of a child by the parent is likely to result in serious emotional or physical damage to the child.

**A qualified expert witness** is meant to be someone with expertise beyond a social worker and includes:

- ◇ tribal members recognized by the tribe as knowledgeable in family organization and child rearing,
- ◇ lay experts with substantial experience in Indian child and family services, or
- ◇ professional persons with considerable experience in their respective field.

**Foster care placement preferences** must follow a prescribed order, absent good cause to the contrary:

- (1) a member of the child's extended family,
- (2) a foster home that is approved or licensed by the child's tribe,
- (3) an Indian foster home of another tribe that is licensed by the appropriate agency; or
- (4) an institutional placement for children that is approved by the child's tribe and is suitable to meet the child's needs.

**Termination of parental rights** may not be ordered without showing **beyond a reasonable doubt** that the continued custody of a child by the parent is likely to result in serious emotional or physical damage to the child. Evidence must include testimony of a qualified expert witness.

**Adoptive placement** requires **preference** be given, absent good cause to the contrary, to placement with:

- (1) a member of the child's extended family;
- (2) other members of the child's tribe;
- (3) members of other tribes; or
- (4) a non-American Indian family.

**Adoption** can be **overturned** within 2 years if fraud or duress is proven.

An **Indian adoptee** who is at least 18 years of age may, through the court, request his/her **adoption records** to identify possible tribal affiliation and any rights he/she may be entitled to as an Indian person.

### **Voluntary child custody proceedings**

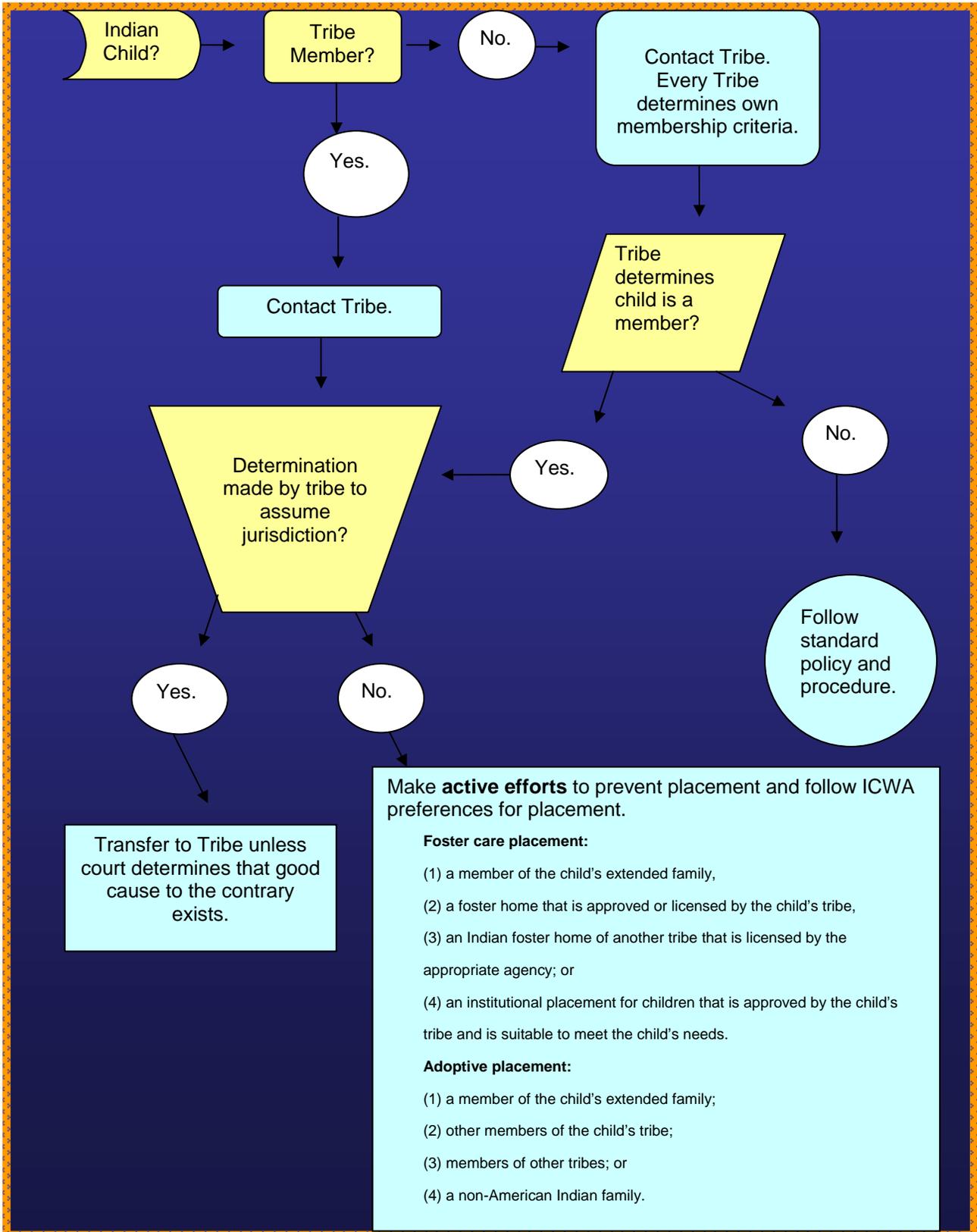
**Voluntary placement agreements** may be withdrawn at any time and the child must be returned to the parent.

**Voluntary consent to termination of parental rights** must be done in writing and recorded in the presence of a judge; certification is required that the parents fully understood their consent.

Any **consent for adoption** given prior to, or within 10 days after birth is not valid (Note: Adoption Act (23 Pa C.S. Chapter 27) at §2711 (relating to consents necessary to adoption) requires that any consent given within 72 hours is not valid.)

**Consent** to termination of parental rights or to adoption may be withdrawn at any time for any reason prior to entry of final decree. (Note: Adoption Act (23 Pa C.S. Chapter 27) § 2711 (relating to contents of consent) requires that the consent can only be revoked by the parent within 30 days of its execution.)

## Section VIII ICWA Process



## Section IX Footnotes and Bibliography

### **Footnotes**

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## **Section X Appendices**

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