

FOR ADDITIONAL INFORMATION CONTACT

Jill Holt, MSW, MPA
DHHS ICWA Program Coordinator

jill.holt@nebraska.gov

Michelle Paxton, J.D.
CCFL Trainer

mpaxton@unl.edu

Kathy Olson, J.D., M.A.
CCFL Trainer

kolson1@unl.edu

Mark Ells, J.D., L.L.M.
CCFL Trainer

mells@unl.edu

Elizabeth Sterns, J.D.
CCFL Trainer

esterns3@unl.edu



University of Nebraska—Lincoln
Center on Children, Families, and the Law
206 S. 13th Street, Suite 1000 | Lincoln, NE 68588-0227
Phone: (402) 472-3479 | FAX: (402) 472-8412
<http://ccfl.unl.edu>

This project is supported by Grant #1501NEFOST under a subgrant from DHHS-ACF and NDHHS

Nebraska Indian Child Welfare Act



A CASE MANAGEMENT GUIDE

May 2016

The Law

The federal Indian Child Welfare Act (ICWA) was enacted in 1978. In 1985, Nebraska codified the federal ICWA and in 2015, the Nebraska legislature clarified many ICWA provisions. The law aims to protect Indian children in state child welfare systems and help them remain connected to their families, cultures, and communities. Compliance is mandatory.

- Federal Law (1978)—U.S. Code, Title 25, Chapter 21, §1903
- State Law (1985)—Nebraska Revised Statutes, Section 43-1501, *et. seq.*

ICWA applies anytime DHHS or Probation becomes involved with a child who is:

**Abused or neglected
Dependent
Status offender
Law violator placed outside the home**

APPLY ICWA

A member of an Indian tribe OR eligible for membership in an Indian tribe AND the biological child of a member of an Indian tribe

Regional ICWA Contacts



Oglala Sioux Tribe
William Cross, ICWA Director
ONTRAC - Pine Ridge
P.O. Box 2080
Pine Ridge, SD 57770
Telephone: (605) 867-5805
Fax: (605) 867-1893
Email: wi_cross@yahoo.com
www.oglalalakotatonation.org



Omaha Tribe
Marla Spears, CFS Director
Ansley Griffin, ICWA Specialist
200 Indian Hills Drive
P.O. Box 500
Macy, NE 68039
Telephone: (402) 837-5331 ext. 301
Fax: (402) 837-5362
Email: agriffin@omahatribe.com
www.omaha-nsn.gov



Ponca Tribe of Nebraska
Lynn Schultz, ICWA Specialist
1800 Syracuse Avenue
Norfolk, NE 68701
Telephone: (402) 371-8834
Fax: (402) 371-7564
Email: lschultz@poncatrib-ne.org
www.poncatrib-ne.org



Rosebud Sioux Tribe
Shirley J. Bad Wound,
ICWA Specialist
P.O. Box 609
Mission, SD 57555
Telephone: (605) 856-5268
Email: rsticwa9@gwtc.net
www.rosebudsiouxtribe-nsn.gov



Yankton Sioux Tribe
Melissa Sanchez-Chrans,
ICWA Director
P.O. Box 1153
Wagner, SD 57380
Email: yst_icwa@outlook.com
Telephone: (605) 384-5712
www.yanktonsiouxtribe.net



Santee Sioux Nation
Carla Cheney, CW Director
Dakota Tiwahe Service Unit
Route 2, Box 5191
Niobrara, NE 68760
Telephone: (402) 857-2342
Fax: (402) 857-2361
Email: carla.cheney@nebraska.gov
www.santeesiouxnation.net/dtsu.html



Winnebago Tribe
Gwen Porter, CFS Program Manager
Vacant, ICWA Worker
P.O. Box 723
Winnebago, NE 68071
Telephone: (402) 878-2379
Fax: (402) 878-2228
Email: gwen.porter@winnebago-tribe.com
Email re notices:
annette.bass@winnebago-tribe.com
www.winnebago-tribe.com



BIA / Department of the Interior
BIA - Great Plains Regional Office
Human Services - MC-303
115 4th Avenue SE, Suite 400
Aberdeen, SD 57401
Telephone: (605) 226-7343
Fax: (605) 226-7446
www.bia.gov



Federal Register
www.gpo.gov/fdsys
List of Federally Recognized Tribes

- Click *Advanced Search*
- Select *Federal Register* from list of *Available Collections*
- Click *Add*
- Under *Search in:*, select *Title* and type in *Indian Entities Recognized*
- Click *Search*
- Sort results by date (new to old) and select most current

List of Tribal Agents For Service of Notice

- Same as above, but search "Indian Child Welfare Tribal Agents"





Resources

Nebraska Resource and Referral System (NRRS)

You can search for culturally appropriate services two ways:

Specific provider or service

- Go to the website nrrs.ne.gov
- Click on "Search for Providers & Services" at the top of the page 
- Search by 1) selecting the location of services, 2) entering a keyword or name of provider, or 3) selecting the type of service(s) needed. Then look for the buffalo symbol  to identify the culturally appropriate services.

Culturally appropriate services by location

- Go to the website nrrs.ne.gov
 - Click on "Native American Resources"
- 
- Enter the location and click search
 - All of the services are culturally appropriate and identified with the buffalo symbol 

Additional ICWA Resources

Nebraska DHHS

Jill Holt
DHHS ICWA Program Coordinator
1313 Farnam Street, Second Floor
Omaha, NE 68102
Cell: (402) 219-1952
Email: jill.holt@nebraska.gov

Code of Federal Regulations

<http://www.gpo.gov/fdsys/>
Indian Child Welfare Act

- Click on "Code of Federal Regulations" from the right-hand menu. Select year. Look at Title 25 - Indians. Click on Chapter 1. Indian Child Welfare Act is part 23 (in Subchapter D - Human Services).

Native American Rights Fund

www.narf.org
ICWA manual
www.narf.org/icwa

National Indian Child Welfare Association:

www.nicwa.org
ICWA guidelines
www.nicwa.org/policy/regulations/icwa/ICWA_guidelines.pdf

My ICWA Champion

Name:

Email:

Phone:

Inquiry

§§ 43-279; 43-1514

When do you or the court ask about membership?

The court and DHHS must inquire about ICWA eligibility at certain intervals to ensure ICWA compliance. This includes:



Both court* and non-court cases



Whenever a relative, including a parent, is identified



Throughout the case: intake, initial assessment, ongoing

*Judge required to inquire at the first court hearing

How might you ask about membership?

EXPLAIN that if the child is a member or eligible for membership with a tribe, there could be additional:

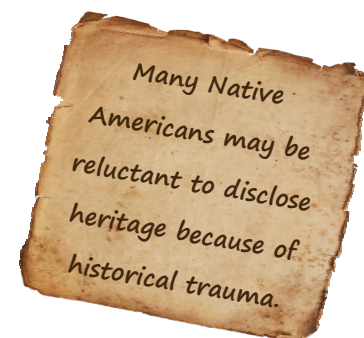
- Protections
- Rights
- Services

ASK if the child or any relative is:

- A member of a tribe
- Eligible for membership in a tribe

ASK if the child or any relative of the child has:

- Received health services from an Indian Health Center
- Received benefits or assistance from an Indian organization
- Lived on or near a reservation
- Attended a pow wow
- Spoken an Indian language
- Attended a boarding school



Active Efforts

§§ 43-1503(1); 43-1505(4)

What are active efforts?

Active efforts means providing case management that is 1) more than reasonable efforts to preserve and reunify the family and is 2) culturally appropriate.

This includes, but it is not limited to:

- Identifying and engaging tribe's ICWA Specialist
- Exhausting tribally appropriate family preservation services
- Asking family and tribe's ICWA Specialist about tribal services provided by:
 - ◊ Tribe
 - ◊ Extended family or other tribal members if extended family unavailable
- Informing and actively assisting family members in accessing resources (housing, financial, transportation)
- Promoting and monitoring family's access to and progress in culturally appropriate resources provided by extended family, tribe, tribal community, or Indian caregiver

When are active efforts required?

Active efforts are required as soon as CFSS knows or has a reasonable belief ICWA could apply.

Provide active efforts report at
EVERY COURT HEARING
and send to tribe within **3 DAYS** of filing



NOTES:

Relinquishment

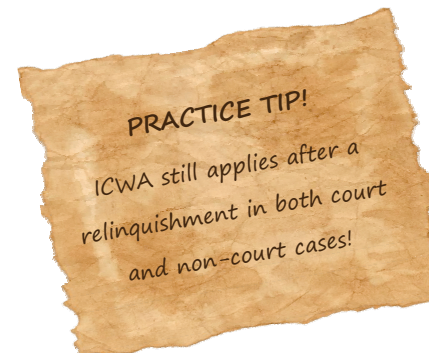
§ 43-1506

Requirements

1. In writing
2. Executed before a judge
3. Certified by a judge that terms and consequences were explained and understood
4. Certified by a judge that hearing was in a language the parent understood
5. Child is at least 10 days old

Differences for ICWA Cases

- Parent may withdraw relinquishment for *any* reason before the adoption decree
- Parent may withdraw relinquishment if obtained through *fraud or duress* for up to 2 years after adoption decree
- In non-court involved case, DHHS has additional reporting requirements to



Adoptions in ICWA Cases

DHHS must send to the Department of the Interior:

- Copy of the adoption decree
- Name and tribal affiliation of the child
- Names and addresses of the biological parents
- Names and addresses of the adoptive parents
- Names of agencies having files or information related to the adoptive placement
- Affidavit that biological parent's identity remain confidential, if applicable

Qualified Expert Witness (QEW)

§§ 43-1503 (15); 43-1505 (5) & (6)

What is a QEW?

An expert witness testifying 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.”

Who qualifies as a QEW?

In identifying a QEW, specific qualifications should be considered. Preference is given to people who are **experienced and/or knowledgeable** about the **social and cultural standards and childrearing practices** within the Indian child’s tribe. As a last resort, a professional with substantial education in his or her specialty may serve as a QEW.

How is a QEW identified?

The tribe’s ICWA Specialist may know if the tribe has identified tribal members or other individuals to serve as QEWs in ICWA cases. You should share any names with the county attorney immediately.

When is a QEW required?

- Protective Custody Hearing (out-of-home placement)
- Termination of Parental Rights

NOTES:

Tribe’s ICWA Specialist

What should I ask the tribe’s ICWA Specialist?

ACTIVE EFFORTS

- Do you believe active efforts have been provided?
- What services may be available to the child(ren) and family through your tribe? What culturally relevant services would you like DHHS to seek for this family?

NOTICE

- Did you receive the ICWA notice about the child(ren) involved in this case?

TRIBAL INVOLVEMENT

- Do you need more information to make a determination about intervention or transfer of jurisdiction?

PLACEMENT

- Does the tribe have its own placement preferences?
- Do you know of any relatives or other tribal members who may be willing and available to be considered for placement?
- Do you have information we should include in a cultural plan?
- Are you or is someone in your tribe able to assist us with developing a cultural plan?

QUALIFIED EXPERT WITNESS (QEW)

- Do you or does someone in your office serve as a QEW for your tribe’s ICWA cases? Or, do you have a policy about QEW testimony?
- Does your tribe have a tribal resolution identifying who may serve as a QEW for your tribe’s ICWA cases?
 - ⇒ May the County Attorney contact those QEWs directly or should requests for QEW testimony go through your office?

GENERAL COMMUNICATION

- What is the best way to contact you with updates and to provide case documents — phone, email, fax, or mail?
- Do you want to participate in meetings by telephone? If you cannot participate by phone, may I send you an email update about family team meetings, school meetings and other case meetings?
- Do you know how to participate in court hearings by phone? (Provide contact information for the Judge’s bailiff or the clerk of courts.)

Notice

§§ 43-1505; 43-1506

In both non-court and court-involved cases, the tribe(s), parents, and/or the Indian custodian must receive notice if the child is or could be an Indian child. This notice must include necessary family information for the tribe to make a determination regarding ICWA eligibility and the next court date, if applicable.

	NON-COURT CASE	COURT CASE
WHO do I notify?	1. Tribe(s) 2. Parents 3. Indian Custodian	
HOW do I notify?	<ul style="list-style-type: none"> Letter on N-FOCUS (send registered mail, return receipt requested) Telephone Fax OR Email 	<ul style="list-style-type: none"> Letter on N-FOCUS (send registered mail, return receipt requested)
WHEN do I notify?	Within 5 days of DHHS offering services	As soon as ICWA could apply

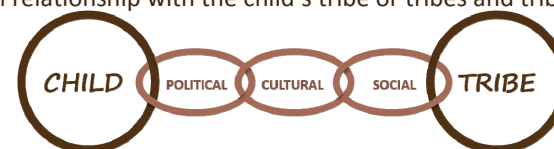
NOTES:

Placement Guidelines

§§ 43-1503(2); 43-1508

Best Interests for Out-of-Home Placement

Placement should reflect the **unique values** of the **child's tribal culture** and is best able to assist the child in establishing and developing the political, cultural, and social relationship with the child's tribe or tribes and tribal community.



Deviation from Placement Preferences

Any party can present to the court by clear and convincing evidence good cause to deviate from preferences:

- Parent preference
- Child preference (12 and older)
- Extraordinary physical or emotional needs of child (need expert testimony)
- Unable to comply with preference after diligent search

Cultural Plan



A cultural plan is required if:

1. Child is placed in non-Indian home **OR**
2. Child is placed in home not affiliated with the tribe.

PRACTICE TIP!
Develop plan with tribe's ICWA Specialist, foster family, parent/custodian, family, and child!

Plan must include strategies to:

- ☐ Educate the child about their tribal history
- ☐ Initiate and maintain contact with extended family and other tribal members
- ☐ Expose the child to positive Native American role models, literature, music, and art
- ☐ Recognize and address racism at the child's current age and in the future
- ☐ Plan for the child to be part of tribal events and ceremonies, etc.

Placement Guidelines

§ 43-1508




The law sets forth standards for placement of Indian children. If the tribe has its own placement preferences, you must follow those.

Foster Care or Preadoptive Placement Preferences

Placement must take into account the special needs of the child and be:



- Least restrictive
- Reasonable proximity to home

Preferences given in descending order:

1. A member of the Indian child's extended family 
2. Other members of the Indian child's tribe or tribes
3. A foster home licensed, approved, or specified by the Indian child's tribe or tribes
4. An Indian foster home licensed or approved by an authorized non-Indian licensing authority
5. A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's tribe or tribes 
6. An Indian facility or program for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to the Indian child's needs
7. A non-Indian facility or program for children approved by an Indian tribe 

Adoptive Placement Preferences

Preferences given in descending order:

1. A member of the Indian child's extended family 
2. Other members of the Indian child's tribe or tribes
3. Other Indian families
4. A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's tribe or tribes 

 A cultural plan could be required

Tribe's Response to Notice

As sovereign nations, tribes have sole authority to determine membership within the tribe. After you provide the required notice to a tribe, there are four possible responses you might receive from the tribe.

TRIBE'S RESPONSE	DOES ICWA APPLY?	COULD ICWA APPLICABILITY CHANGE?
Child is a member	YES	NO
Child is eligible for membership and parent is a member	YES	NO
Child is eligible for membership but parent is not a member of the child's tribe	MAYBE	YES <ul style="list-style-type: none"> • Parent could be a member in a different tribe
Child is not a member nor eligible for membership	NO	YES <ul style="list-style-type: none"> • Child or parent could be a member in a different tribe • Tribe could change membership requirements • Child or parent could become a member at a later date
No response regarding child's membership nor eligibility	MAYBE	YES <ul style="list-style-type: none"> • Non-court <ul style="list-style-type: none"> ⇒ Contact ICWA specialist monthly • Court <ul style="list-style-type: none"> ⇒ Contact tribe's ICWA specialist ⇒ Share status with county attorney and DHHS legal to request a court hearing and determination

PRACTICE TIP!

If family provides information or CFSS has a reasonable belief that the child could be a member, DHHS must comply with ICWA pending membership determination.

Tribal Involvement

How could tribes be involved?

Tribes have five options when an Indian child has been identified. In all cases, the tribe *may* participate in or consult on family team meetings and other case planning meetings. The tribe *may* also identify or provide culturally relevant services.

1. NO TRIBAL INVOLVEMENT

In non-court and court-involved cases, tribes are not required to participate in services or proceedings.

2. TRIBAL INVOLVEMENT

The tribe may participate, consult, or provide services in both non-court and court-involved cases.

3. INTERVENTION

The tribe could become a party to the juvenile case.

When is intervention denied?

- Never

What are the tribe's rights?

- Call witnesses
- Present recommendations
- Have a representative present (may not be an attorney)
- Participate by telephone or live audiovisual means

PRACTICE TIP!
Compliance with ICWA is mandatory regardless of the type of tribal involvement

When a tribe selects any of the options above, DHHS is responsible for case management.

WHEN CAN THE TRIBE BE INVOLVED?

At ANY stage of the case.



Tribal Involvement

4. EXCLUSIVE JURISDICTION

The tribal court is the only court that has the right to hear the case.

When does a tribe have exclusive jurisdiction?

1. Indian child is a ward of tribal court **OR**
2. Indian child is a resident of the reservation

5. TRANSFER

The juvenile court sends the case to the tribal court.

Who can request a transfer to tribal court?

- Tribe
- Either parent or Indian Custodian

What qualifies as good cause for the court to deny transfer?

- No tribal court to hear case
- Other grounds determined on a case-by-case basis

When can a case be transferred?

- Any stage of the case

When is transfer denied?

- Either parent objects
- Tribal court declines
- The court finds good cause not to transfer

PRACTICE TIP!

Whenever transfer is possible, contact DHHS Legal and DHHS ICWA Program Coordinator

If exclusive jurisdiction or transfer occurs, the tribe is responsible for case management and DHHS is no longer involved.

NOTES: