Indian Child Welfare Act (ICWA) Placement Preferences Webinar
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10:00 a.m. – 11:30 a.m.

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National Indian Justice Center

- The National Indian Justice Center, Inc. (NIJC) is an Indian owned and operated non-profit corporation with principal offices in Santa Rosa, California.

- The National Indian Justice Center was established in 1983 through the collective efforts of the National American Indian Court Judges Association, the American Indian Lawyer Training Program, and the Bureau of Indian Affairs in order to establish an independent national resource for Native communities and tribal governments.

- The goals of NIJC are to design and deliver legal education, research, and technical assistance programs which seek to improve the quality of life for Native communities and the administration of justice in Indian country.

- To learn more about our projects go to http://www.nijc.org.
Purpose and Scope of this Webinar

NIJC received a grant award from the California Governor’s Office of Emergency Services to develop the Native American Children Training Forum

- http://www.nijc.org/NACTF.html

- Improve access to Indian Child Welfare Training Resources through the delivery of IT equipment and development of distance learning T/TA resources.

- I will record this webinar for integration into the NACTF distance learning courses.
Goals and Objectives

1. Provide a Brief Overview of the Purpose of the ICWA Placement Preferences.

2. Review the New ICWA Guidelines and its Impact upon the Placement Preferences for Adoption, Foster Care and Kinship Placements.

3. Describe the Right of Tribes to Establish, by Resolution, a Different Order of Placement Preferences (25 U.S.C. § 1915(c)).
BRIEF OVERVIEW OF THE PURPOSE OF THE ICWA PLACEMENT PREFERENCES.
The Congress found “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.”
This dynamic relationship is in a constant state of change and interaction while maintaining cultural beliefs and practices that have existed since time immemorial.
My Perception of Native American Cultures

- The participation of children in the tribal culture and community is essential to the perpetuation of the culture, development of the child's Native American identity and involves a wide spectrum of activities including but not limited to:
  - Extended family visits involving the exposure of the child to the dynamics of a familial group larger than the "nuclear family,"
  - Ceremonies occurring throughout the seasons, and
  - Participation in the activities of the tribe as a living community.
My Perception of Native American Cultures

- Tribal families practice child rearing within an extended family structure consisting of relatives, friends, elders and others in the community.
  - The nuclear family unit is not the focal point of Native American social structures.
- Tribal justice systems often administer punitive measures in a community structure.
Historic Challenges to Tribal Cultures

- Settlement and Development of U.S.A.
  - Change in homelands, food sources, trading routes
  - Replacement of tribal economies
  - War, disease, treaties, loss of land, loss of generations to war, loss of generational cultural exchange
  - Boarding schools, loss of family security, trauma, generational parenting gaps
  - Surviving only to deal with stereotypes, racism, epidemics (diabetes, cancer, suicide), marginalization.
Association on American Indian Affairs (AAIA) Report Findings

- **Minnesota:**
  - 1 in every 8 Indian minors was adopted.
  - 1 in every 4 Indian children under 1 years old was adopted.
  - 90% of unrelated adoptions were in non-Indian homes.
  - Foster placement of Indian children was 5 times that of non-Indian children.
Association on American Indian Affairs (AAIA) Report Findings

- **Montana:**
  - Foster placement of Indian children was 13 times that of non-Indian children.

- **South Dakota:**
  - 40% of all adoptions by the SD Dept. of Public Welfare since 1967 were Indian children, yet Indian children comprised 7% of the juvenile population.
  - Foster placement of Indian children was 16 times that of non-Indian children.
Association on American Indian Affairs (AAIA) Report Findings

- **Washington:**
  - Adoption rate of Indian children was 19 times that of non-Indian children.
  - Foster placement of Indian children was 10 times that of non-Indian children.

- **Wisconsin:**
  - Separation rate of Indian children from their families was 1600% greater than for non-Indian children.
INDIAN CHILD WELFARE ACT OF 1978
Indian Child Welfare Act

- On October 15, 1978, ICWA (Public Law 95-608) was passed into law by Congress to remedy the harms of inconsistent federal policies. Codified at 25 USC §1901, et seq.

- The legislative history relied upon surveys conducted by the Association on American Indian Affairs (AAIA) indicating approximately 25-35% of all Indian children were separated from their families and placed in foster homes, adoptive homes or institutions.
  - AAIA - [http://www.indian-affairs.org/index.htm](http://www.indian-affairs.org/index.htm)

- The history states “[t]he wholesale separation of Indian children from their families is perhaps the most tragic and destructive aspect of American Indian life today.”
Key Definitions: Indian Child

- An unmarried person who [A] is under the age of 18 and is either:
  - [i] A member of a federally-recognized tribe, or
  - [ii] Eligible for membership in a federally-recognized tribe and is the biological child of a member of a federally-recognized tribe.

- Formal enrollment in tribe is not required.

[A] and [i] = Indian Child Defined by ICWA; OR

[A] and [ii] = Indian Child Defined by ICWA.
Key Definitions: Indian Child’s Tribe

- The tribe of which the child is a member or eligible for membership.
- If the child is eligible for membership in more than one tribe, the tribe with which the child has more significant contacts.
Key Definitions: Extended Family

- §1903(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
  - Step-parent

- According to tribal law or custom

Note: Encourage Tribes to Define Extended Family in Tribal Codes
When does ICWA Apply?

Two-pronged test:

1. Is the proceeding a “child custody proceeding” initiated by county or state?
2. Is the child involved an Indian child (as defined by ICWA)?
Proceedings Covered by ICWA

- Foster care placements
- Termination of parental rights (Including stepparent adoptions)
- Pre-adoptive placements
- Adoptive placements
- Status offenses or juvenile delinquency, if any part of proceeding involves foster care, pre-adoptive, or adoptive placement
- W&IC 601 cases (California Stat. Ref.)
Proceedings Not Covered by ICWA

1. Tribal Court Proceedings;
2. Placements based upon an act by the Indian child which, if committed by an adult, would be deemed a criminal offense; or
3. An award, in a divorce proceeding, of custody of the Indian child to one of the parents.
Implementation of ICWA

ICWA Implementation – Unique within each State Jurisdiction and often in conflict in regions within states.
ICWA PLACEMENT PREFERENCES.
§ 1915. Placement of Indian children

(a) Adoptive placements; preferences

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; \(\rightarrow\) Definition §1903(2)

(2) other members of the Indian child's tribe; or

(3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences

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.
§ 1915. Placement of Indian children

(c) **Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences**

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) **Social and cultural standards applicable**

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) **Record of placement; availability**

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.
IMPACTS OF NEW ICWA GUIDELINES AND PROPOSED REGULATIONS
Links to New Guidelines and Proposed Regulations

10146 Federal Register / Vol. 80, No. 37 / Wednesday, February 25, 2015 / Notices


14880 Federal Register / Vol. 80, No. 54 / Friday, March 20, 2015 / Proposed Rules

ICWA Guidelines

- Original ICWA Guidelines were published on November 26, 1979.

New points in timeline for interpretation of ICWA
New Guidelines Contents

A. General Provisions
B. **Pretrial Requirements**
C. Procedures for Making Requests for Transfer to Tribal Court
D. Adjudication of Involuntary Placements, Adoptions, or Termination of Parental Rights
E. Voluntary Proceedings
F. **Dispositions**
G. Post-Trial Rights
A.5. How do these guidelines interact with State laws?

(a) These guidelines provide minimum Federal standards and best practices to ensure compliance with ICWA and should be applied in all child custody proceedings in which the Act applies.

(b) In any child custody proceeding where applicable State or other Federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Act, ICWA requires that the State court must apply the higher standard.
A.3. When does ICWA Apply?

- New Guidelines A.3.(c)
  - (c) Agencies and State courts, in every child custody proceeding, must ask whether the child is or could be an Indian child and conduct an investigation into whether the child is an Indian child.
  - Even in those cases in which the child is not removed from the home, such as when an agency opens an investigation or the court orders the family to engage in services to keep the child in the home as part of a diversion, differential, alternative response or other program, agencies and courts should follow the verification and notice provisions of these guidelines.
New ICWA Guidelines

- “Section A is intended to make clear that there is no existing Indian family (EIF) exception to application of ICWA. The EIF doctrine is a judicially-created exception to the application of ICWA.”

- See New Guidelines A.3. (b).
Best Interests of Indian Children

- The provisions of ICWA create a presumption that ICWA’s placement preferences are in the best interests of Indian children; therefore, an independent analysis of “best interest” would undermine Congress’s findings.
- Consequently, it is inappropriate to conduct an independent analysis, inconsistent with ICWA’s placement preferences, of the “best interest” of an Indian child.
New Guidelines – Summary of Section F

The updated Section F requires that:

- The agency bears the burden of proof if it departs from any of the placement preferences and must demonstrate that it conducted a diligent search to identify placement options that satisfy the placement preferences, including notification to the child’s parents or Indian custodians, extended family, tribe, and others; and

- The court determines whether “good cause” to deviate from the placement preferences exists before departing from the placement preferences.

Section F adds provisions to ensure that “good cause” determinations are explained to all parties and documented.

The guidelines specify in section F that “good cause” does not include normal bonding or attachment that may have resulted from a placement that failed to comply with the Act.

Because ICWA does not allow for consideration of socioeconomic status in the placement preferences, this section also now clarifies that the court may not depart from the preferences based on the socioeconomic status of one placement relative to another, except in extreme circumstances.
ICWA Placement Preferences

- In any preadoptive, adoptive or foster care placement of an Indian child, the Act’s placement preferences apply; except that, if the Indian child’s tribe has established by resolution a different order of preference than that specified in the Act, the agency or court effecting the placement must follow the tribe’s placement preferences.
25 USC §1915(a) Adoptive placements; preferences

(a) Adoptive placements; preferences

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, including unwed individuals.

**The court should consider the preference of the Indian child or parent.**

Sec. F.I.(b) - Agency must demonstrate through clear and convincing evidence that it conducted a diligent search to identify options that satisfy placement preferences for A, PA, and FC.
(b) Foster care or preadoptive placements; criteria; preferences

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, extended family or siblings, 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.
D. Adjudication of Involuntary Placements, Adoptions, or Terminations or Terminations of Parental Rights

D.3.(a) What are the applicable standards of evidence?

(a) The court may not issue an order effecting a foster care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child’s continued custody with the child’s parents or Indian custodian is likely to result in serious harm to the child.

See D.3.(b) and (c) for evidentiary standards for TPR and “serious emotional or physical damage to the particular child”.

Burden of Proof for Foster Care
“Good Cause” to Deny Transfer to Tribal Court

Old Guidelines:
Court may make exception to placement preferences due to:

- Request of biological parents, or child, if child is of sufficient age;
- Extraordinary physical or emotional needs of child, as established by testimony of expert witness;
- Unavailability of suitable homes within placement preferences;
- Proceeding at advanced stage.

New Guidelines (summary):

- Sec. F requires that court determines whether good cause exists BEFORE deviating from placement preferences.
- Good Cause must be explained and documented.
- The updated criteria are more general; in summary, good cause may be found if
  - either parent objects,
  - the tribal court declines, or
  - the State court otherwise determines that good cause exists.

The updated guidelines specifically omit some factors that were the basis for “good cause” under the 1979 guidelines. One such factor that should no longer be considered is whether the proceeding was at an advanced stage. Another factor that should no longer be considered is the level of contacts the child has had with the tribe—this factor unnecessarily introduces an outsider’s evaluation of the child’s relationship with the tribe and cannot sensibly be applied to infants.
Good Cause

F.4. How is a determination for “good cause” to depart from the placement preferences made?

(a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for such belief or assertion must be stated on the record or in writing and made available to the parties to the proceeding and the Indian child’s tribe.

(b) The party seeking departure from the preferences bears the burden of proving by clear and convincing evidence the existence of “good cause” to deviate from the placement preferences.
F.4. How is a determination for “good cause” to depart from the placement preferences made?

(c) A determination of good cause to depart from the placement preferences must be based on one or more of the following considerations:

1) The request of the parents, if both parents attest that they have reviewed the placement options that comply with the order of preference.

2) The request of the child, if the child is able to understand and comprehend the decision that is being made.

3) The extraordinary physical or emotional needs of the child, such as specialized treatment services that may be unavailable in the community where families who meet the criteria live, as established by testimony of a qualified expert witness; provided that extraordinary physical or emotional needs of the child does not include ordinary bonding or attachment that may have occurred as a result of a placement or the fact that the child has, for an extended amount of time, been in another placement that does not comply with the Act.

4) The unavailability of a placement after a showing by the applicable agency in accordance with section F.1., and a determination by the court that active efforts have been made to find placements meeting the preference criteria, but none have been located. For purposes of this analysis, a placement may not be considered unavailable if the placement conforms to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties.
Good Cause

• F.4. How is a determination for “good cause” to depart from the placement preferences made?
  (d) The court should consider only whether a placement in accordance with the preferences meets the physical, mental and emotional needs of the child; and may not depart from the preferences based on the socioeconomic status of any placement relative to another placement.
Voluntary Proceedings

- ICWA determination must be made. Agency and State must ask whether a child is an Indian child in any voluntary proceeding.
- Notice is not required under ICWA (federal requirements), however, California law (SB 947) now requires notice in voluntary proceedings. Case law also indicates that notice is best practice (*Mississippi Band of Choctaw vs. Holyfield*)
- Tribe’s right to intervene applies.
- ICWA’s Consent requirements apply.
Voluntary Proceedings, Consent Requirements

- Must be in writing.
- Must be recorded before a court of competent jurisdiction.
- Judge must certify that terms and consequences of consent were fully explained (i.e., conditions, timing and withdrawal).
- Judge must certify that the giver of consent understood English, or that it was interpreted into a language the person understood.
- A consent given prior to or within 10 days after birth of the Indian child is not valid.

New Guidelines:
- Even in voluntary proceedings, it is necessary to determine whether ICWA applies, and to comply with ICWA’s provisions.
- To ensure that parents and Indian custodians understand the significance of their consent, the updated section E requires the consent document to identify any conditions to the consent and requires the court to explain the consequences of the consent before its execution.
- It also addresses steps for withdrawal of consent. The updated section E further restates the statutory restriction that a consent given prior to or within 10 days after birth of an Indian child is not valid.
Withdrawal of Consent for Voluntary Placement

- Parent or Indian custodian may withdraw consent at any time before the entry of a final decree of adoption.
- After final decree, may withdraw consent only on the grounds that it was obtained through fraud or duress.
Invalidation of a State Court Proceeding

- Can be invalidated if certain provisions of the ICWA were violated
- Petition brought in juvenile court
- Petition may be brought by:
  - The Indian child
  - The child’s parents
  - The child’s last custodian
  - The child’s tribe
Active Efforts (See Section D of New Guidelines)

- § 1912. Pending court proceedings
  - Consists of subsections a through f.
  - § 1912(d) Remedial services and rehabilitative programs; preventive measures
    - 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.

- New Guidelines are instructing courts and social services to BEGIN Active Efforts at point that they learn the child may be Indian.
  - The updated section B clarifies that active efforts must begin from the moment the possibility arises that the Indian child may be removed. This updated section also clarifies that active efforts should be conducted while verifying whether the child is an Indian child; this clarification ensures compliance with ICWA in cases in which the status of whether the child is an Indian child is not verified until later in the proceedings.
New Guidelines – B. Pretrial Requirements – B.1. When does the requirement for active efforts begin?

(a) The requirement to engage in “active efforts” begins from the moment the possibility arises that an agency case or investigation may result in the need for the Indian child to be placed outside the custody of either parent or Indian custodian in order to prevent removal.

(b) Active efforts to prevent removal of the child must be conducted while investigating whether the child is a member of the tribe, is eligible for membership in the tribe, or whether a biological parent of the child is or is not a member of a tribe.
New Guidelines – B. Pretrial Requirements –

B.2. What actions must an agency and State court undertake in order to determine whether a child is an Indian child?

(a) **Agencies must ask** whether there is reason to believe a child that is subject to a child custody proceeding is an Indian child. If there is reason to believe that the child is an Indian child, the agency must obtain verification, in writing, from all tribes in which it is believed that the child is a member or eligible for membership, as to whether the child is an Indian child.

(b) **State courts must ask**, as a threshold question at the start of any State court child custody proceeding, whether there is reason to believe the child who is the subject of the proceeding is an Indian child by asking each party to the case, including the guardian ad litem and the agency representative, to certify on the record whether they have discovered or know of any information that suggests or indicates the child is an Indian child.

-Courts may require agencies to provide evidence of this certification. (See B.2.(b)(1)(i).)
New Guidelines – B. Pretrial Requirements –
B.2. What actions must an agency and State court undertake in order to determine whether a child is an Indian child?

- B.2.(b)(2) If there is reason to believe the child is an Indian child, the court must confirm that the agency used active efforts to work with all tribes of which the child may be a member to verify whether the child is in fact a member or eligible for membership in any tribe, under paragraph (a).
No hearings may be conducted regarding foster care or TPR until waiting periods end.

- **Notice Received (0 Days)**
- **10 days - 10 days** after each parent or Indian custodian (or Secretary if the parent or Indian custodian is unknown to the petitioner) has received notice in accordance with 25 U.S.C. 1912(a).
- **10 days - 10 days** after the Indian child’s tribe (or the Secretary if the Indian child’s tribe is unknown to the party seeking placement) has received notice in accordance with 25 U.S.C. 1912(a).
- **20 Days - A tribe, parent or Indian custodian entitled to notice of the pendency of a child custody proceeding has a right, upon request, to be granted an additional 20 days from the date upon which notice was received** (25 U.S.C. 1912(a)).
- **30 days - 30 days** after the parent or Indian custodian has received notice in accordance with 25 U.S.C. 1912(a), if the parent or Indian custodian has requested an additional 20 days to prepare for the proceeding.
Emergency Removal/Placement

- New Guidelines: Emergency removals and emergency placements of Indian children should be severely limited, applying only in circumstances involving imminent physical damage or harm.
- The updated section B clarifies that the guidelines for emergency removal or placement apply regardless of whether the Indian child is a resident of or domiciled on a reservation.
- This section also explicitly states the standard for determining whether emergency removal or emergency placement is appropriate—i.e., whether it is necessary to prevent imminent physical damage or harm to the child.
- The guidelines clearly state that the emergency removal/placement must be as short as possible, and provides guidance on how to ensure it is as short as possible. It also shortens the time period for temporary custody without a hearing or extraordinary circumstances from 90 days to 30 days.
- Right to transfer the proceeding to tribal court available at any stage in the proceeding including during Emergency Removal/Placement.
What about the Proposed Regulations?

- The proposed regulations will
  - integrate into the federal ICWA statute (25 USC 1901 – 1952 new and/or revised definitions as well as
  - integrate the New Guidelines into the federal regulations that implement the federal ICWA statute, 25 CFR 23.
Proposed Regulations - Definitions

2. In § 23.2:
   a. **Add** a definition for “active efforts”;
   b. **Revise** the definition of “child custody proceeding”;
   c. **Add** definitions for “continued custody”, “custody”, and “domicile”;
   d. **Revise** the definition of “extended family member”;
   e. **Add** a definition for “imminent physical danger or harm”;
   f. **Revise** the definition of “Indian child’s tribe”, “Indian custodian”, “parent”, “reservation”, and “Secretary”;
   g. **Add** a definition for “status offenses”;
   h. **Revise** the definition of “tribal court”; and
   i. **Add** definitions for “upon demand” and “voluntary placement”.


Addition of the Definition of Active Efforts

- Active efforts means actions intended primarily to maintain and reunite an Indian child with his or her family or tribal community and constitute more than reasonable efforts as required by Title IV–E of the Social Security Act (42 U.S.C. 671(a)(15)). Active efforts include, for example:
  - List of 15 examples follows the proposed definition.
Proposed Revision of the Definition of Custody Proceeding

Original Definition:
"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.

Proposed Revised Definition:
Child custody proceeding means and includes any proceeding or action that involves:

• (1) Foster care placement, which is any action removing an Indian child from his or her 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, although parental rights have not been terminated;

• (2) Termination of parental rights, which is any action resulting in the termination of the parent-child relationship;

• (3) Preadoptive placement, which is 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; or

• (4) Adoptive placement, which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.
Add definitions for “continued custody”, “custody”, and “domicile”

**Continued custody** means physical and/or legal custody that a parent already has or had at any point in the past. The biological mother of a child has had custody of a child.

**Custody** means physical and/or legal custody under any *applicable tribal law or tribal custom or State law*. A party may demonstrate the existence of custody by looking to tribal law or tribal custom or State law.

**Domicile means:**

(1) For a parent or any person over the age of eighteen, physical presence in a place and intent to remain there;

(2) For an Indian child, the domicile of the Indian child’s parents. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child’s mother.
Proposed Revision of the Def. of Extended Family Member

**Original Definition:**
"[E]xtended 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;

**Proposed Revised Definition:**
Extended family member is defined by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, is 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.
Add a definition for “imminent physical danger or harm”

**Imminent physical damage or harm** means present or impending risk of serious bodily injury or death.
**Proposed Revisions:** Revise the definition of “Indian child’s tribe”, “Indian custodian”, “parent”, “reservation”, and “Secretary”

**Original Definitions:**

(5) "Indian child's tribe" means

(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;

**Proposed Revised Definitions:**

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 more significant contacts.
Proposed Revisions: Revise the definition of “Indian child’s tribe”, “Indian custodian”, “parent”, “reservation”, and “Secretary”

Original Definitions:
(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;

Proposed Revised Definitions:
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. An Indian person may demonstrate that he or she is an Indian custodian by looking to tribal law or tribal custom or State law.
Proposed Revisions: Revise the definition of “Indian child’s tribe”, “Indian custodian”, “parent”, “reservation”, and “Secretary”

Original Definitions:
(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;

Proposed Revised Definitions:
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 an unwed father where paternity has not been acknowledged or established.
Proposed Revisions: Revise the definition of “Indian child’s tribe”, “Indian custodian”, “parent”, “reservation”, and “Secretary”

Original Definitions:

(10) "reservation" means 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;

(11) "Secretary" means the Secretary of the Interior;

Proposed Revised Definitions:

Reservation means Indian country as defined in 18 U.S.C. 1151, including any lands, title to which is 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 means the Secretary of the Interior or the Secretary’s authorized representative acting under delegated authority.
Addition: Status Offenses

- Status offenses mean offenses that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person’s status as a minor (e.g., truancy, incorrigibility).
Proposed Revisions: Tribal Court

Original Definitions:
(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.

Proposed Revised Definition:
Tribal court means a court with jurisdiction over child custody proceedings, including 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 vested with authority over child custody proceedings.
Addition: Upon Demand and Voluntary Placement

- **Upon demand** means that the parent or Indian custodians can regain custody simply upon request, without any contingencies such as repaying the child’s expenses.

- **Voluntary placement** means a placement that either parent has, of his or her free will, chosen for the Indian child, including private adoptions.
Thank you for your time!

If you have any questions, email me.

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At this time, the regulations are still pending. We will know more at the end of the year.