



**New Hampshire Division for Children, Youth and Families Policy Manual**

**1510 INDIAN CHILD WELFARE ACT (ICWA) COMPLIANCE**

Chapter: Case Management Standards for CP and JJ Field Services

Section: Engaging Families

Approved:

Joseph E. Ribsam, Jr., DCYF Director

Policy Directive: **21-01**

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**References Of Note**

Federal Authority: [25 USC 1903](#), [25 USC 1911](#), [25 USC 1922](#), [42 USC 671](#), [42 USC 672](#), [42 USC 673](#), [42 USC 675](#), [45 CFR 1356.67](#), and [25 CFR 23](#)

Statutes: [RSA 169-C](#) and [RSA 169-D](#)

Administrative Rules:

Case Law:

This policy defines the requirements to comply with the Indian Child Welfare Act (ICWA).

**Required Practices**

*Any deviations to the following information must be documented with Supervisory Approval.*

- I. ICWA applies to children who are members of federally recognized Indian tribes, in child custody proceedings and emergency/ex parte proceedings that result in placement through RSA 169-C (child protective cases) and RSA 169-D (CHINS cases).
- II. The Division must identify children who are a member of, or are eligible for membership in, a federally recognized tribe.
- III. A tribe has exclusive jurisdiction if:
  - A. The Indian child's domicile or residence is on a reservation;
  - B. The child is a ward of tribal court; or
  - C. The tribal court accepts the transfer of the case.
- IV. A case will be deemed concurrent jurisdiction if:
  - A. An Indian child is eligible for membership in a tribe and the tribe cannot or does not accept jurisdiction; or
  - B. A tribal court shares jurisdiction with DCYF and the New Hampshire Circuit Courts.
- V. Any placement must follow the ICWA placement preferences in 25 CFR 23.130 unless an Indian child's tribe establishes a different order of preference.

- A. The Circuit Court must apply the ICWA placement preferences, unless there is a determination of 'good cause' to depart from the preferences.
  - B. The Circuit Court must also consider the placement preference of the Indian child or Indian child's parent or Indian custodian, where appropriate.
  - C. Field staff must ensure a DCYF Attorney is consulted, and represents the Division, for any of the following RSA 169-C or RSA 169-D hearings or proceedings involving an Indian child under ICWA (25 CFR 23.113):
    - 1. Emergency or ex parte proceedings;
    - 2. Involuntary foster care; or
    - 3. Termination of Parental Rights.
  - D. A placement may not depart from the preferred placements based on the socioeconomic status of any identified placement or be based solely on the ordinary bonding or attachment that flowed from the time spent in a non-preferred placement that was made in violation of ICWA.
  - E. Details of all efforts to comply with the tribe's placement preferences and the placement decision process shall be documented in the DCYF electronic information system.
- VI. ICWA has specific notification requirements to the U.S. Bureau of Indian Affairs for Indian children adopted, or adoptions vacated, through New Hampshire courts.
- A. Field staff must consult with the DCYF ICWA Program Specialist and DCYF Attorney to address these provisions.
- VII. DCYF will maintain a record of every voluntary or involuntary foster care, pre-adoptive, and adoptive placement of an Indian child in every RSA 169-C and RSA 169-D case.
- VIII. Upon request by an Indian child's tribe or the U.S. Bureau of Indian Affairs, DCYF must make the case records (identified in 25 CFR 23.141(b)) available within 14 days.

<b>Standard Operating Procedures</b>		
<b>SOP</b>	<b>Title</b>	<b>Applicable Disciplines</b>
1510.1	Determining ICWA Applicability and Jurisdiction	Field Staff
1510.2	Managing ICWA Cases with Concurrent Jurisdiction	Field Staff

**Glossary and Document Specific Definitions**

A - B    C - D    E - F    G - I    J - L    M - N    O - Q    R - S    T - V    W - Z

**For the Purpose of this Document:**

**“Child Custody Proceeding”** means, for the purpose of this policy, any action, other than an emergency proceeding, that may culminate in one of the following outcomes in an RSA 169-C or RSA 169-D case:

- (1) Foster-care placement, which is any action removing an Indian child from their parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
- (2) Termination of parental rights, which is any action resulting in the termination of the parent-child relationship;
- (3) Pre-adoptive 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.

It also means an action that may culminate in one of these four outcomes is considered a separate child-custody proceeding from an action that may culminate in a different one of these four outcomes. If a child is placed in foster care or another placement as a result of a status offense, that status offense proceeding is a child-custody proceeding. (25 CFR 23.2)

**“Emergency Proceeding”** means and includes any court action that involves an emergency removal or emergency placement of an Indian child (25 CFR 23.2).

**"Parent"** means any biological parent 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 (putative fathers) (25 CFR 23.2).

<b>Document Change Log</b>			
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