



George E. Pataki
Governor

NEW YORK STATE
OFFICE OF CHILDREN & FAMILY SERVICES
52 WASHINGTON STREET
RENSSELAER, NY 12144

John A. Johnson
Commissioner

Informational Letter

Transmittal:	06-OCFS-INF-07
To:	Commissioners of Social Services
Issuing Division/Office:	Division of Development and Prevention Services/ Office of Central Services
Date:	October 30, 2006
Subject:	Indian Child Welfare Act Compliance Desk Aid for New York State Child Welfare Workers (ICWA Desk Aid) OCFS Publication 5046 (Rev. 9/06)
Suggested Distribution:	Directors of Services Foster Care Supervisors Adoption Supervisors Staff Development Coordinators Social Services Attorneys Family Court
Contact Person(s):	Any questions concerning this release should be directed to the appropriate Regional Office, Division of Development and Prevention Services. BRO- Linda Brown (716) 847-3145 Linda.Brown@ocfs.state.ny.us RRO- Linda Kurtz (585) 238-8201 Linda.Kurtz@ocfs.state.ny.us SRO- Jack Klump (315) 423-1200 Jack.Klump@ocfs.state.ny.us ARO-Glenn Humphreys (518) 486-7078 Glenn.Humphreys@ocfs.state.ny.us NYCRO- Fred Levitan (212) 383-1788 Fred.Levitan@ocfs.state.ny.us YRO- Pat Sheehy (914) 377-2080 Patricia.Sheehy@ocfs.state.ny.us
Attachments:	ATTACHMENT A - ICWA Parent/Indian Custodian Notification Letter ATTACHMENT B - ICWA Tribal Notification Letter ATTACHMENT C - ICWA Secretary of the Interior Notification Letter
Attachments Available Online:	Yes

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
01 OCFS INF-5 03-OCFS- INF-10		18 NYCRR 428.9 18 NYCRR 430.11 18 NYCRR 430.12 18 NYCRR 431.18	Federal Indian Child Welfare Act: 25 USCA 1901, et seq. Section 39 of the Social Services Law		

I. Purpose

The purpose of this Informational Letter is to introduce the *Indian Child Welfare Act Compliance Desk Aid for New York State Child Welfare Workers* and model notification letters to social services districts and voluntary authorized agencies. The desk aid was developed to be a ready resource for staff that work with the placement of children, to assist in improving compliance with the requirements of the federal Indian Child Welfare Act (ICWA), enacted in 1978.

To assist social services districts (including legal staff), family courts, and voluntary authorized agencies in complying with the required tribal notification, an updated list of *New York State Indian Nations / Tribes* is included in the desk aid. The list includes the name, address, and phone number of the nation/tribe that must be notified when a Native American child is being removed from his or her home.

II. Background

The underlying principle of ICWA is to “protect the best interest of Indian children” by supporting their cultural identity both in foster care and in adoptive homes, 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.” To implement ICWA, New York State amended section 39 of the Social Services Law and promulgated state regulations (18 NYCRR 431.18) to comply with the federal standards, including but not limited to standards for the removal of Indian children from their families. Major provisions of ICWA and state statutory and regulatory requirements, including tribal notification procedures, are outlined in *A Guide to Compliance With the Federal Indian Child Welfare Act in New York State* pamphlet, which was released with 01 OCFS INF-5. Both the guide and the desk aid are available on the OCFS Internet site under publications: www.ocfs.state.ny.us/main/publications/.

III. Program Implications

Compliance with ICWA and state standards implementing ICWA, where applicable, is mandatory. The *Indian Child Welfare Act Compliance Desk Aid* outlines the necessary steps to improve compliance with ICWA requirements. The steps that must be taken, in chronological order, are:

- 1) **Identify Indian nation/tribe** - In order to determine if a child is a member or is eligible for tribal membership or is the biological child of a member of a nation/tribe who resides on or is domiciled within the reservation of such nation/tribe, the caseworker should do the following:
- Ask the family, including the child, if age appropriate, if they are aware of any tribal affiliation.
 - Find out if a parent or grandparent has a tribal enrollment card.
 - Develop a family tree indicating the mother's and grandmother's maiden names and the names of the father and paternal grandparents.
 - Contact the appropriate Tribal Office directly. The address and phone number for each Tribal Office is provided on the last page of the ICWA Compliance Desk Aid. Also, please see the "New York State Tribe/Nation Contacts for Indian Child Welfare Cases" listing on the OCFS Internet site (www.ocfs.state.ny.us) under "Native American Services." Office of Children and Family Services (OCFS) Native American Services can provide assistance in identification of the tribe.

ICWA requires that, in any child custody proceeding initiated by the social services district pursuant to section 358-a or 384-b of the Social Services Law or Article 7 or 10 of the Family Court Act, which involves a Native American child, the social services district must demonstrate to the court that, prior to the commencement of such proceeding, active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Native American family and that these efforts have proved unsuccessful. These efforts must involve using available resources of the child's extended family, the nation/tribe, and individual Native American caregivers.

The caseworker should ask the family, including the child, if age appropriate, if they know the name of their clan. Clan identification can assist caseworkers in identifying extended family members for placement.

Systems Implications and Coding Guidelines – Once a child has been identified as a Native American child, it is necessary to identify the child as a Native American child in WMS and CCRS. When encoding the WMS Services Application, caseworkers should enter **04 (Indian on NYS Reservation)** under the State Charge Field (SF). If any of the children in the WMS Services Case are to be tracked in CCRS (meaning that they would be in receipt of protective, adoptive, or foster care services), enter **I** under the ethnicity column. These children would also be in CONNECTIONS, where "Native American" should be checked in their Person Demographics.

Systems questions should be directed to OCFS IT Operations at 1 (800) 342-3727.

- 2) **Provide tribal notification** – Notification requirements are contained in OCFS regulation 18 NYCRR 431.18 (c). The contents of the written notification of the child custody proceeding must include all of the following information:
- The child's name, date of birth, and place of birth

- The child's tribal affiliation, if known
- The names of the child's parents, dates of birth of the child's parents, places of birth of the child's parents, the child's mother's maiden name
- A copy of the petition, complaint or other document filed with the court to initiate the court proceeding
- A statement of the rights of the biological parents/custodians to intervene in the proceeding
- A statement of the right under federal law to court-appointed counsel
- The location, mailing address, and telephone number of the court

The model notification letters, which are provided as attachments to this release, include the required information. The social services district is encouraged to adapt the model letters to its specific circumstance and use them to provide the required ICWA notifications. These letters will be supported in CONNECTIONS Build 19 when implemented. In the interim, the letters may be found on the OCFS Internet site under Native American Services at www.ocfs.state.ny.us/main/nas, and on the OCFS CONNECTIONS intranet site home page at <http://ocfs.state.nyenet/connect>, under the heading "News and Announcements" postings for October 13, 2006. The templates may be downloaded and individualized by the social services districts.

The social services district, in any child custody proceeding initiated by the district pursuant to section 384-b of the Social Services Law or Article 7 or 10 of the Family Court Act, is required to notify the child's parent or Indian custodian and the child's Indian nation/tribe, by registered mail, of the pending proceeding and of their right to intervention, using ATTACHMENT A - ICWA Parent/Indian Custodian Notification Letter and ATTACHMENT B - ICWA Tribal Notification Letter.

If the identity or location of the parent or Indian custodian and the nation/tribe cannot be determined, the notice must be given by registered mail to OCFS at the address listed on page 4 of the desk aid and to the federal government using ATTACHMENT C - ICWA Secretary of the Interior Notification Letter. The mailing address is included in the model letter.

If the nation/tribe wants to intervene in the proceeding, it must notify the court using the mailing address and the telephone number of the court, as provided by the social services district in the required written notification. Once the tribe intervenes, the district must provide the tribe with any notices or petitions it would otherwise serve on a party.

- 3) **Engage nation/tribe in service plan development** – OCFS regulations 18 NYCRR 428.9 and 430.12(c)(2)(i)(a) require social services districts to make efforts to involve the child's Indian nation/tribe and, where possible, a qualified expert witness in the development and review of the service plan.
- 4) **Follow placement preferences** – OCFS regulations 18 NYCRR 431.18 (f)(1) and (g)(1) establish a required order of preference for foster care and adoption placement of an Indian child. In the absence of good cause to the contrary, an authorized agency providing foster care or adoption services is required to place the child according to the established order of preference. The order of preferences for foster care placements and adoption placements are described in the

desk aid. **NOTE:** The nation/tribe may establish a different order of preference, which will take precedence.

5) Make active efforts to provide remedial services and rehabilitative programs.

6)

Please see the *Indian Child Welfare Act Compliance Desk Aid* for additional information. For technical assistance with ICWA requirements, please contact Kim Thomas, Native American Services Specialist, at (716) 847-3123.

s/s Jane G. Lynch

Issued By

Name: Jane G. Lynch

Title: Deputy Commissioner

Division/Office: Division of Development and Prevention Services

ATTACHMENT A - ICWA Parent/Indian Custodian Notification Letter

REGISTERED MAIL/ RETURN RECEIPT REQUESTED

10/30/2006

Docket #

:

Pursuant to the federal Indian Child Welfare Act of 1978 (25 USC 1912), the Department of Social Services/Administration for Children’s Services, as petitioner in the above proceeding, gives notice to of a child custody proceeding now pending in the court named below. A hearing in this proceeding has been scheduled for at before the Honorable , Judge. The name, address and phone number of the courthouse are: .

The name of the child(ren) in question is , born in . It is believed that is a member of or eligible for membership in the Tribe/Nation or is the biological child of a member of the Tribe/Nation who resides or is domiciled within an Indian reservation.

Father: , born in
Address: (Tribe/Nation enrollment number)

Mother: , born in
Address: (Tribe/Nation enrollment number)

Indian custodian(s):
Address: .

Attached is additional information regarding the child’s ancestry.

Under the federal Indian Child Welfare Act of 1978 (25 USC 1911), the parent(s) or Indian custodian(s) of the child, and the child’s Tribe/Nation have the right to intervene at any point in this proceeding. In addition, the parent(s), Indian custodian(s) and the Tribe/Nation have the right to petition the above-named court to transfer this proceeding to the Tribe’s/Nation’s jurisdiction. Upon such petition, the court shall transfer such proceeding to the Tribe’s/Nation’s jurisdiction, absent good cause to the contrary or the Tribe’s/Nation’s court declining such transfer.

No proceeding involving the above-named child(ren) may take place until at least ten (10) days after receipt of this notice. Upon request, the parent(s), Indian custodian(s) of the child and the child’s Tribe/Nation must be granted an additional twenty (20) days to prepare for this proceeding.

Be advised that the above referenced proceeding may have significant legal consequences on the future custodial parental rights of the parent or Indian custodian of the child(ren) referenced above. Enclosed is a copy of the petition, complaint or other legal document filed with the court to initiate this proceeding.

If the parent(s) or Indian custodian(s) of the child wish legal counsel but cannot afford attorney fees, court-appointed counsel may be requested and the court must appoint counsel upon a finding that you can not afford counsel.

If you need more information, call me at . Your earliest response would be most appreciated.

Respectfully,

Caseworker

Attorney

cc: New York State Office of Children
and Family Services
Native American Services
295 Main Street
Buffalo, New York 14203

attachment

ATTACHMENT B - ICWA Tribal Notification Letter

REGISTERED MAIL/ RETURN RECEIPT REQUESTED

10/30/2006

Docket #

:

Pursuant to the federal Indian Child Welfare Act of 1978 (25 USC 1912), the Department of Social Services/Administration for Children’s Services, as petitioner in the above proceeding, gives notice to of a child custody proceeding now pending in the court named below. A hearing in this proceeding has been scheduled for at before the Honorable , Judge. The name, address and phone number of the courthouse are: .

The name of the child(ren) in question is , born in . It is believed that is a member of or eligible for membership in the Tribe/Nation or is the biological child of a member of the Tribe/Nation who resides or is domiciled within an Indian reservation.

Father: ,born in
Address: (Tribe/Nation enrollment number)

Mother: , born in
Address: (Tribe/Nation enrollment number)

Indian custodian(s):
Address: .

Attached is additional information regarding the child’s ancestry.

Under the federal Indian Child Welfare Act of 1978 (25 USC 1911), the parent(s) or Indian custodian(s) of the child, and the child’s Tribe/Nation have the right to intervene at any point in this proceeding. In addition, the parent(s), Indian custodian(s) and the Tribe/Nation have the right to petition the above-named court to transfer this proceeding to the Tribe’s/Nation’s jurisdiction. Upon such petition, the court shall transfer such proceeding to the Tribe’s/Nation’s jurisdiction, absent good cause to the contrary or the Tribe’s/Nation’s court declining such transfer.

No proceeding involving the above-named child(ren) may take place until at least ten (10) days after receipt of this notice. Upon request, the parent(s), Indian custodian(s) of the child and the child’s Tribe/Nation must be granted an additional twenty (20) days to prepare for this proceeding.

Be advised that the above referenced proceeding may have significant legal consequences on the future custodial parental rights of the parent or Indian custodian of the child(ren) referenced above. Enclosed is a copy of the petition, complaint or other legal document filed with the court to initiate this proceeding.

If the parent(s) or Indian custodian(s) of the child wish legal counsel but cannot afford attorney fees, court-appointed counsel may be requested and the court must appoint counsel upon a finding that you can not afford counsel.

If you need more information, call me at . Your earliest response would be most appreciated.

Respectfully,

Caseworker

Attorney

cc: New York State Office of Children
and Family Services
Native American Services
295 Main Street
Buffalo, New York 14203

attachment

ATTACHMENT C - ICWA Secretary of the Interior Notification Letter

REGISTERED MAIL/ RETURN RECEIPT REQUESTED

10/30/2006

Docket #

**Secretary of the Interior
United States Department of the Interior
1849 C Street, NW
Washington, DC 20240**

Dear Secretary:

Pursuant to the federal Indian Child Welfare Act of 1978 (25 USC 1912), the Department of Social Services/Administration for Children’s Services, as petitioner in the above proceeding, is attempting to give notice to the parent(s) or Indian custodian(s) of a child custody proceeding now pending in the court named below. A hearing in this proceeding has been scheduled for at a.m. before the Honorable , Judge. The name, address and phone number of the courthouse are:

The Department of Social Services/Administration for Children’s Services is sending this notification to the Secretary of the Interior because it does not possess complete information regarding the name and location of the parent(s)/Indian custodian(s) of the above referenced child and the applicable Tribe/Nation. The extent of the information in our possession is as follows.

The name of the child(ren) in question is , born in . It is believed that is a member of or eligible for membership in the Tribe/Nation or is the biological child of a member of the Tribe/Nation who resides or is domiciled within an Indian reservation.

Father: , born in
Address: (Tribe/Nation enrollment number)

Mother: , born in
Address: (Tribe/Nation enrollment number)

Indian custodian(s):
Address: .

Attached is additional information regarding the child’s ancestry.

The parent(s) or Indian custodian(s) and the child’s Tribe/Nation have the right to intervene at any point in this proceeding. The parent(s), Indian custodial and the Tribe/Nation have the right to petition the above-named court to transfer this proceeding to the Tribe’s/Nation’s jurisdiction. Upon such petition, the court shall transfer such proceeding to the Tribe’s/Nation’s jurisdiction, absent good cause the contrary or the Tribe’s/Nation’s court declining such transfer.

No proceeding involving the above-named child(ren) may take place until at least ten (10) days after receipt of this notice. Upon request, the parent(s), Indian custodian(s) of the child and the child's Tribe/Nation must be granted an additional twenty (20) days to prepare for this proceeding.

The above referenced proceeding may have significant legal consequences on the future custodial parental rights of the parent or Indian custodian of the child(ren) referenced above. Enclosed is a copy of the petition, complaint or other legal document filed with the court to initiate this proceeding.

If the parent(s) or Indian custodian(s) of the child wish legal counsel but cannot afford attorney fees, court-appointed counsel may be requested and the court must appoint counsel upon a finding that you can not afford counsel.

If you need more information, call me at . Your earliest response would be most appreciated.

Respectfully,

Caseworker

Attorney

cc: New York State Office of Children
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