DEPARTMENT OF HUMAN RESOURCES
SOCIAL SERVICES ADMINISTRATION
311 WEST SARATOGA STREET
BALTIMORE, MARYLAND 21201

DATE:	July 15, 2015
POLICY #:	SSA-CW #16-5 (Supersedes Policy SSA #08-08)
TO:	Directors, Local Departments of Social Services Assistant Directors, Services Chiefs of Foster Care and Adoption
FROM:	Deborah Ramelmeier, Executive Director Social Services Administration
RE:	Providing Services to Native American Children and Families
PROGRAMS AFFECTED:	Child Protective Services, Alternative Response, In-Home Services, Out-of-Home Placement
ORIGINATING OFFICE:	Office of Child Welfare Practice and Policy Social Services Administration
ACTION REQUIRED OF:	All Local Departments of Social Services
REQUIRED ACTION:	Implementation of certain procedures when working with Native American children in Out-of-Home Placement
ACTION DUE DATE:	Immediately
CONTACT PERSON:	Helene Hornum, Program Analyst (410) 767-7247 helene.hornum@maryland.gov April Edwards, Resource Home Well-Being Supervisor (410) 767-7195 april.edwards@maryland.gov

PURPOSE:

This policy supersedes Policy Directive SSA #08-08 and provides guidance to child welfare staff for delivering services to Native American children and their families. This policy provides clarification on both providing services to families who belong to tribes that are federally recognized and to families who belong to tribes that are not federally recognized.

BACKGROUND:

The Indian Child Welfare Act (ICWA) of 1978 established minimal federal standards in order to protect the rights of Native American children to live with a Native American family and to stabilize and foster continued tribal existence. These Federal standards apply ONLY to federally recognized tribes. There are no federally recognized tribes in Maryland.

This year, the Bureau of Indian Affairs, Department of the Interior, updated the ICWA guidelines. The updated guidelines took effect on February 25, 2015, and can be found in the Federal Register, Vol. 80, No. 37, pp. 10146 -10159.

This policy, in collaboration with the Maryland Commission on Indian Affairs, has been drafted to provide guidance when providing services to a Native American child.

OVERVIEW:

Workers cannot base their decision about whether a child has Native American heritage solely on appearance. Children and parents must be asked if they are of Native American heritage. Relatives should be asked about Native American heritage if one or both parents are unable or unwilling to provide the needed information. This must occur and be documented at intake, placement, or any other time the permanency plan is changed.

Information about a child's Native American heritage might also come from other sources in the following ways:

- A party to the case, Indian tribe, Indian organization or public or private agency informs the local department that the child has Native American heritage;
- A public or State-licensed agency involved in Child Protective Services or family support has discovered information which suggests that the child has Native American heritage;
- The child who is the subject of a proceeding gives the worker or the Court reason to believe that he or she is an Indian child;
- The residence or domicile of the child or his or her biological parent(s) is shown to have a connection to the Native American community;
- An officer of the Court in the proceedings has knowledge that the child may be an Indian child.

ICWA outlines requirements and procedures to be followed when serving Indian children. It applies to all State child custody proceedings including: protective custody actions; out-of-home placements; pre-adoptive and adoptive placements; and actions to terminate parental rights.

ICWA does not apply when services are extended in the process of a child abuse and neglect investigation, the dissolution of marriage, Maryland voluntary placements, or the provision of any protective child welfare services where there has been no custody proceeding.

Eligibility

The ICWA specifically covers any unmarried person under eighteen and who is either a member of a Native American tribe, or eligible for membership in a tribe and the biological child of a member of a tribe. Federally recognized tribes are listed each year in the Federal Register. Maryland does not have any federally recognized tribes.

The child's status as a Native American child shall not affect the determination of eligibility for services or payments under Title IV-E or Medical Assistance.

Determining Native American Heritage of a Child

Children and parents must be asked if they are of Native American heritage. Workers cannot base their decision about whether a child has Native American heritage solely on appearance. Relatives should be asked about Native American ancestry if one or both parents are unable or unwilling to provide the needed information. This must occur and be documented at intake, placement, or any other time the permanency plan is changed. All available information should be reviewed for any indication of Native American heritage.

If any indication of Native American heritage is made, a diligent search shall immediately be initiated for the child's tribal affiliation. The National Tribal Enrollment office of the identified tribe should be contacted directly. The following site offers contact information for federally recognized tribes:

www.bia.gov/WhoWeAre/BIA/OIS/TribalGovernmentServices/TribalDirectory/.

If a specific tribe has been named, the child's tribe shall be contacted within 24 hours. Efforts made to contact the child's tribe must be documented. Within 7 days, written notice shall be sent to the tribe by certified mail with return receipt requested. When no specific tribe can be ascertained, but ICWA eligibility is possible, The Bureau of Indian Affairs should be notified by certified letter with return receipt requested.

The local department should be prepared to provide information on "how" the child is of Native American descent and to inform the tribe of the status of the child's proceedings. It is important that the tribe and the local department identify a tribal contact person for information and services regarding the child.

The tribe determines whether the child is an enrolled member or is eligible to be enrolled. Enrollment means that the child is or would be a recognized member of the tribe and privy to any services or benefits of membership. Because each tribe has different standards of "relatedness", the tribe should be notified of any child with Native American heritage to determine if the child meets the related qualifications.

Any child for whom the local department has knowledge of Native American heritage must receive ICWA consideration. ICWA guidelines should be followed for any child who is believed to have Native American heritage until a final determination has been made. Early identification of Native American heritage is very important to ensure that the child with Native American heritage is not traumatized by culturally inappropriate placements that must be interrupted at a later date to comply with ICWA requirements.

The National Indian Child Welfare Association (NICWA) is available to help with any concerns, and can be reached at (503) 222-4044 or www.nicwa.org.

Children Belonging to a Federally Recognized Tribe

If a child belongs to a federally recognized tribe, the worker must address the following requirements in ICWA when placing the child:

1. Notification to Native American parents and tribe regarding State proceedings involving the child and their right to intervene;
2. Special placement preference for Native American children;
3. Active efforts to prevent the breakup of the Native American family; and
4. Use of tribal courts in child welfare matters: tribal right to intervene in State proceedings or transfer proceeding to the jurisdiction of the tribe.

If there is any indication that the child has Native American heritage or the child belongs to a federally recognized tribe, the following must occur:

1. Parents and child will be provided with information on ICWA, a tribal ICWA contact person, Native American advocates available in the community, and any services or resources available;
2. Notification of services to a Native American child must be sent to the identified Native American tribe;
3. The local department of social services must inform the Court that the child may belong to a federally recognized tribe.

Tribal Rights and Responsibilities

Once the Tribe determines that a child is enrolled or is eligible for enrollment, it has the right to the following:

- Be informed of all progress and proceedings regarding the child;
- Determine placement (tribal home);
- Allow the placement of a child by the local department;
- Intervene in CINA, TPR, and adoption proceedings.

The tribe is to notify the local department of:

- The intent to take custody and commitment of the child under ICWA;
- The intent to allow placement of the child in a Native American foster home;
- The intent to allow the State to place the child with a Non-Native American foster home;
- The intent to consent to State proceedings to terminate parental rights and place for adoption.

The local department is to proceed with the child's case while awaiting a decision from the tribe. The local department must continue to keep the tribe informed of the child's status and any proposed changes.

Should the tribe decide to take custody and commitment of the child, the local department will work with the tribe to transfer jurisdiction of the court and to physically place the child with the tribe. Alternately, the tribe may direct that the child be placed in a Native American home within the State, and preferably within the child's community.

Active Efforts to Prevent Family Breakup

The prevailing standard of the tribe should guide all services and decisions on a case. The agency must make active efforts to provide services to the family after the investigation and prior to a decision to remove a child. A foster care placement of an Indian child may not be made unless the court is satisfied that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Native American family and that these efforts have proved to be unsuccessful.

"Active efforts" means not just an identification of the problem or solutions, but actual concrete efforts showing active attempts to resolve the conditions.

Examples of Active Efforts include:

- Tribal representative is invited to participate at the earliest possible point in case planning and their advice is actively solicited;
- Tribe has been given full access to social services records;
- Advice is sought from Native American advocates involved with the case;
- Development of a case plan with parent(s) or legal guardian(s) that uses Tribal and Native American community resources;
- Parents and children are referred to Native American agencies for services;
- Extended family members are contacted as a resource for the child. Concrete services, such as financial assistance, food, housing, and so forth, are provided if needed.

Placement of Native American Children

As with any child in an out-of-home placement, any Native American child must be placed in the least restrictive setting which meets their needs. **This applies to both children who belong to tribes that are federally recognized as well as those that are not**. Preference shall be given to a foster care placement with:

1) A member of the child's Native American extended family;
2) A foster home licensed, approved, or specified by the child's tribe;

3) A Native American foster home licensed or approved by an authorized non-Native American licensing authority;
4) An institution for children approved by a Native American tribe or operated by a Native American organization which has a program suitable to meet the Indian child's needs.

Preference options must be strictly followed. Placement of a Native American child into a non-Native American home is the last option or alternative after all other options have been exhausted. When appropriate, the preference of the Native American child and/or parent should be considered. Parental preference alone is not sufficient reason for not following the placement requirements. If the local department believes that good cause exists for not placing the child in a higher preference placement, the local department shall seek approval from the tribe. The tribe may effect change in placement preference by order of resolution. When the tribal resolution is received by the local department or court effecting the placement of a Native American child, the local department shall follow the changed order of preference, as long as the placement is the least restrictive setting appropriate to the particular needs of the child.

Emergency Removal of a Child

Nothing in the ICWA shall be construed to prevent the emergency removal of a Native American child in order to prevent imminent damage or harm to the child. Diligent efforts should be made to place a child in a home of first preference. Only if that is not possible may a child be placed in a home of the next preference category. The local department shall ensure that the emergency removal or placement terminates immediately when it is no longer necessary to prevent imminent damage or harm to the child. The local department shall expeditiously proceed with child custody proceedings, transfer the child to the jurisdiction of the appropriate Native American tribe, or return the child to the parents or Native American caregiver, as appropriate.

Children Who Belong to Tribes That Are Not Federally Recognized

Any child who belongs to an indigenous tribe and who is in foster care must have the opportunity to connect with their particular heritage. In addition, it is very important that the foster home recruitment efforts in Maryland include the recruitment of families from indigenous tribes.

Preventing Out-of-Home Placement

Under ICWA, a Native American child may not be placed in foster care unless the local department can satisfy to the Court that active efforts have been 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.

A foster care placement may not be ordered in a court proceeding without a determination supported by clear and convincing evidence and testimony by a qualified expert witness stating that the continued custody of the child by the parents or Native American caregiver is likely to result in serious emotional or physical damage to the child.

An adoptive placement may not be ordered in a court proceeding without a determination supported by evidence beyond a reasonable doubt and the testimony by a qualified expert witness stating that the continued custody of the child by the parents or Native American caregiver is likely to result in serious emotional or physical damage to the child.

Court Proceedings

In any involuntary proceeding in Maryland's courts in which the Court knows or has reason to know that a Native American child is involved, the local department must notify the parent or Native American caregiver and the child's tribe by certified mail with return receipt, of the pending proceedings and their right to intervene. If the identity or location of the parent or caregiver is unknown and the tribe cannot be determined, notice shall be given to the Secretary of the Interior in the same manner. The Secretary will have 15 days after the receipt to provide notice to the parent or caregiver and tribe. No court proceeding may be held until at least 10 days after receipt of notice by the parent or caregiver and the tribe or Secretary. Upon request, the parent, caregiver, or tribe may be granted up to 20 days to prepare for the proceeding.

Transfer of Child to Tribal Agency

Maryland currently does not have any federally recognized tribes. Therefore, when it is necessary to transfer a child from the care and placement responsibility of the State of Maryland to a Tribal Agency outside of the State, the procedures will be dependent on whether the Court has exercised jurisdiction over the child prior to or at time of transfer.

- The Court has not exercised jurisdiction: If the child has been removed by shelter authorization or voluntary placement, and needs to be transferred to a Tribal Agency the local department shall contact the receiving Tribal agency to arrange for the physical transfer of the child;
- The Court has exercised jurisdiction over the child: The child's case must be closed at time of transfer since the Court does not have authority to transfer jurisdiction from Maryland to another state or tribal agency. The local department shall petition the Court for rescission of custody of the child based upon the written request by the Tribal Agency to take care and placement responsibility of the child;

The following documentation and information will be provided to the Tribal Agency as part of the transfer of the child:

1. All judicial determinations, shelter authorizations, and if applicable voluntary placement agreements;
2. All documentation related to the establishment of Title IV-E eligibility. Note: If Title IV-E eligibility has not been established at the time of transfer, an eligibility determination will be completed with all available information;
3. All documentation and information available regarding the child's eligibility or potential eligibility for other federal benefits; and
4. Case record documentation including:
    a. Caseplan;
    b. Health and education records;
    c. Information on child's placement(s);
    d. Name and date; and
    e. Most recent provider license or approval.