



# ICWA PLACEMENT PREFERENCES

*“Children fare better when placed with family, in community, and connected to culture.”*

*- National Indian Child Welfare Association,*

*Setting the Record Straight: The Indian Child Welfare Act*

All Indian children deserve a strong, protective circle of caring adults to ensure they are loved, safe, and connected to their community, tribe and culture. The Indian Child Welfare Act (ICWA) of 1978 is a federal law that recognizes how important those connections are while also ensuring the continued existence of tribal nations as unique, distinct, and sovereign.

ICWA was passed into law in response to the alarmingly high number of American Indian and Alaska Native children being removed from their families and placed outside of their communities. ICWA requires states and courts to protect the best interest of Indian children by establishing a higher standard of evidence for removal and by maintaining and strengthening their connection to family, community, culture, and tribal nation.

ICWA is considered the “gold standard” in child welfare policy and practice and requires state child welfare agencies and courts to:

1. Provide active efforts to both prevent removal from and to reunify children with their families
- 2. Follow preferred placement preferences**
3. Obtain testimony of a qualified expert witness (QEW) at the removal hearing and in the event of a termination of parental rights

In 2016 the Bureau of Indian Affairs issued both official regulations and accompanying guidelines to help state courts and child welfare agencies implement ICWA; these regulations and guidelines provide clarification on important aspects of the law including standards of practice with families.



## PLACEMENT PREFERENCES

ICWA outlines the placement preferences, in the absence of good cause, for both adoptive and pre-adoptive or foster care placements of Native children.

For foster care placements, the first preference is with “a member of the Indian child’s extended family” followed by “a foster home licensed, approved, or specified by the Indian child’s tribe.” The 2016 ICWA training slides from the [Bureau of Indian Affairs \(BIA\) on Placement Preferences](#)

cover the following areas: Applicability, Adoptive Placements, Foster Care and Pre-Adoptive Placements, and Good Cause to Depart. The module addresses the crux of ICWA’s protections – to help keep the Indian child with extended family or the community.

States, by law, are expected to comply with ICWA requirements. A starting place for doing so is deepening their understanding of the intent, purpose, and necessity of ICWA. Tribes can fulfill their responsibility for ICWA compliance in many ways, including cultivating and engaging agency and community resources.

**Tribal nations can support ICWA and help Native children stay in their communities and connected to their tribes by:**

1. Establishing a different order of placement preference (by tribal resolution) for foster care and adoptive placements
  - The Native American Rights Fund’s (NARF) [Online ICWA Guide](#) has a helpful FAQ section on Placement that includes information on tribal placement preferences. Please note NARF’s site is intended for educational and informational purposes only and is not legal advice.
2. Maintaining a pool of available and approved Native resource homes
  - Tools from Tribes on the Tribal Information Exchange offers over 40 resources from other child welfare professionals to help with [Recruiting Foster Families](#) and the process of [Foster Care Licensing](#).
  - The [Diligent Recruitment Navigator](#) from AdoptUSKids is a customizable tool that guides people through the process of developing a comprehensive, multi-faceted, diligent recruitment program

## ICWA: LAW & REGULATIONS

[The Indian Child Welfare Act \(25 U.S.C. §§ 1901–1963\)](#)

[BIA Federal Regulations \(25 C.F.R. Part 23, Indian Child Welfare Act Proceedings, Final Rule\)](#)

[BIA Guidelines for Implementing the Indian Child Welfare Act](#)

*Find more ICWA resources on the [Tribal Information Exchange](#).*

### 3. Understanding ICWA's provision to allow for a departure from placement preferences when there is good cause to do so

- The [2016 BIA Federal Regulations \(25 C.F.R. Part 23\)](#) provides helpful answers to the question, "How is a determination of 'good cause' to depart from the placement preferences made?" (23.132). This guidance is shared in a [user-friendly format](#) by Cornell Law School Legal Information Institute.
- NARF's [Online ICWA Guide](#) provides an explanation of good cause, which is one of the main areas of continuing litigation under the ICWA and continued development in the law.
- The [Quick Reference Sheet for Voluntary Proceedings](#) contains a section on placement preferences.

### 4. Ensuring prevailing social and cultural standards are met

- NARF's [Online ICWA Guide](#) shares "Practice Tip: One of the many ways that tribes incorporate tribal values into placements is through use of customary adoptions. These adoptions do not entail the termination of parental rights and have also been approved for federal subsidies under Title IV-E." Learn more about this more appropriate permanency placement for Native children in the [Customary Adoption Resource List from the Center for Tribes](#).

### 5. Exercising the right to access state records of ICWA placements

- ICWA explicitly states that "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." (25 U.S.C. §1915)
- Alaska Tribes offer an [informational site](#) for child welfare cases and provide downloadable templates of filings. Their Motion to Compel packet is a tool that tribes can use to force the state to provide a detailed explanation of why children are not placed in ICWA compliant homes.



## 6. Collaborating with state and county child welfare systems to write and enact best policy

- The [Minnesota Indian Child Welfare manual](#), which applies to both county social service agencies and private child-placing agencies, explicitly states:  
“Out-of-home placement of Indian children with their siblings or half siblings in a non-relative, non-Indian home does not meet the placement preference requirements. This type of placement does not constitute a placement with ‘family’ or with ‘relatives’. A child’s family, relatives or kinship relationships shall be determined in regard to the parent(s) and/or Indian custodian(s), not to other children in the placement home. In circumstances where a child requires placement in a non-relative home, or in a placement not within reasonable proximity to a child’s home, or in placement where siblings are separated and not placed in close proximity, the local social service agency will make active efforts to assure that a child is placed as quickly as possible in accordance with preferences prescribed in this section.”

## **ADDITIONAL RESOURCES**

### [Placement Patterns \(Casey Family Programs\)](#)

This research brief uses national data to provide one lens to examine the extent to which the placement patterns of American Indian children in out-of-home care are aligned with the placement preference provisions outlined in ICWA.

### [Understanding ICWA Placements Using Kinship Care Research: Family that Children Have Never Known \(National Indian Child Welfare Association\)](#)

This publication highlights how “children in kinship care have profound and enduring benefits to mental health, economic, and educational well-being”.

### [Indian Child Welfare Act \(ICWA\) Placement Preferences Webinar \(National Indian Justice Center\)](#)

This presentation by Raquelle Myers, staff attorney with the NIJC, reviews the Placement Preferences outlined within ICWA, the BIA Guidelines, and the rights of tribes within the law. Slide 7 offers a great look at the symbiotic relationship between tribal youth, tribal community, and tribal culture.