



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
CHILDREN'S ADMINISTRATION

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October 14, 2013

To:

Children's Administration All Staff

From:

Randy Hart, Deputy Assistant Secretary
Children's Administration

Subject:

Important Information Regarding Alternate Intervention 10 Day Response Time/EFSS

This memo is to clarify the Indian Child Welfare Update memo released May 31, 2013. I also want to inform you of changes to policy and procedure related to the Native American inquiry process and Local Indian Child Welfare Advisory Committee case staffings.

May 31, 2013 Indian Child Welfare Update memo

We have heard that there is confusion and concern across the state about the memo which states "sections 11.01 to 11.035 of the ICW manual will be removed." That memo identified that there are legal issues surrounding the application of the state and federal Indian Child Welfare Acts (ICWA) to children who do not meet the legal definition contained in the statute.

The requirements in ICWA pertain to the legal process that must occur when there is a child custody proceeding in state court involving **only** children who meet the legal definition of "Indian Child" in the state and federal statutes. These child custody proceedings, in the context of the work of CA, include dependency and associated reviews, termination and guardianship. Both the state and federal ICWA clearly also establish the right of federally recognized tribes to take jurisdiction from state court over an Indian child's case.

But the state and federal ICWA do not define or determine culturally appropriate social work practice **which should extend to all children** based on their cultural heritage and

community. Maintaining a child or children's cultural connections means workers take the steps necessary to effectively engage a family. This practice may include but is not limited to obtaining information about protocols such as, how to approach a family, use of a cultural elder, matriarch or patriarch or the need for a culturally appropriate support person. To reiterate, removal of sections 11.01 to 11.035 from the ICW manual **does not** mean a worker should not apply best practice and develop a culturally appropriate case plan for children and families of non-federally recognized Tribes or Canadian First Nations.

Furthermore, changes to both federal and state law since the adoption of the Washington Administrative Code (WAC) definition of "Indian child" in 1976 supersede and limit the applicability of that WAC definition of "Indian child." In addition, CA recently received a communication from the Canadian government requesting that CA enter into a memorandum of understanding requiring sharing of confidential child-specific information in order for Canada to respond to CA's Native American inquiry. Because CA does not have legal authority to share this information, CA will not be entering into such a MOU. This will not affect ICWA cases since the procedures outlined in the state and federal ICWAs apply only to tribes federally-recognized by the United States government.

Inquiry process changes

For the purposes of making sure that the legal process required by state and federal law as it relates to children who meet the Indian child definition, from the start of a case, workers must work to identify whether **a child is a member or the biological child of a member and eligible for membership with a federally recognized tribe** [§1903(4)(a)(b); RCW 13.38.040(7)(a) (b)]. In an effort to improve our performance with this requirement Children's Administration has recently made some revisions to how this process is completed. The protocol for your region is stated below.

- **Region One**

- Please use the centralized NAIR unit protocol. If you have questions about this please contact CANativeAmericanInquiry@dshs.wa.gov.

- **Region Two**

- Please use the centralized NAIR unit protocol. If you have questions about this please contact CANativeAmericanInquiry@dshs.wa.gov.

- **Region Three**

- **Vancouver and Tacoma** please use the centralized NAIR protocol. If you have questions about this please contact CANativeAmericanInquiry@dshs.wa.gov.

All other field offices in Region Three should continue with their local protocol.

You **should not** complete this process when working with children and families from non-federally recognized and Canadian First Nations Tribes. This is a policy change and will be reflected in the Indian Child Welfare manual, as well as all associated forms.

Local Indian Child Welfare Advisory Committee (LICWAC) Case staffings

LICWAC case staffings may be conducted for children (and families) from non-federally recognized or Canadian First Nations Tribes should LICWAC teams agree to hear the case. All other criteria for LICWAC staffing in chapter 10 remain in effect.

In closing we emphasize these changes do not remove your responsibility to develop case plans that are culturally appropriate and relevant for all children. Please direct questions about these changes to Bob Smith. He can be reached at (360) 902-0298, or email Robert.Smith@dshs.wa.gov.