

PROCEDURE FOR INITIAL INDIAN CHILD WELFARE ACT DETERMINATION AT INTAKE AND INVESTIGATION, and instructions for completing form CF-FSP 5323 (Verification of Indian Child Welfare Act Eligibility, available in DCF Forms)

PURPOSE:

The state is required by law and regulation to make benefits and services available to American Indian children in the state on the same basis as other children.

- **Section 39.0137, Florida Statutes**, affirms federal authority in matters involving requirements established under the Indian Child Welfare Act (25 U.S.C. 1901, et seq).
- **Rule 65C-28.013, Florida Administrative Code**, requires the determination of eligibility under the Indian Child Welfare Act (ICWA) at the onset of each child protective investigation.
- At initial contact with any child potentially entering the protective custody of an agency, a child protective investigator, or any other child protection staff, must inquire if the child, the child's parents, or the grandparents are identified with or are an enrolled member of an American Indian tribe, band, or nation, or are an Alaskan Native.
- An inquiry should be made into any information regarding potential American Indian ancestry or lineage on the paternal or maternal family lines.
- The requirements established in ICWA must be applied in any involuntary proceeding if an eligible child is involved in an out-of-home care placement, including shelter care, or the termination of parental rights to the eligible child is sought.
- The requirements of ICWA also apply to cases involving the voluntary relinquishment of children who are members or eligible for membership in American Indian or Alaskan Native tribes.
- At a minimum, ICWA requires notice in any involuntary proceeding and under certain circumstances involving voluntary relinquishment. At the commencement of any action the parents and Indian custodian, if any, of an Indian child, and the Indian child's tribe must be given notice. Some exceptions may apply and investigations or case management staff must consult legal staff if it is suspected that a child is eligible for the protections of ICWA.
- Documentation of any initial information received by the investigator or caseworker regarding possible eligibility will be recorded by completing the form **CF-FSP 5323 (Verification of Indian Child Welfare Act Eligibility) or similar documentation** and entering relevant information in the appropriate screens and in the case notes of the **Florida Safe Families Network (FSFN)**. The CF-FSP 5323 is a tool used to document the results of the **initial** American Indian ancestry inquiry. The parent history family tree chart is completed to the best of the parent's ability for each birth parent that has indicated Indian ancestry as this will assist the tribe in identifying the family's possible connections to their tribe. The child welfare professional has the ability to inquire about additional family history from grandparents.
- *Once completed an American Indian or Alaskan Native ancestry has been established or alleged, the child welfare professional will immediately notify and submit form 5323 to Children's Legal Services (CLS). The tribe must immediately be notified with a formal*

written inquiry and notification to the appropriate tribe(s) and/or to the Bureau of Indian Affairs. This must be in the form of a letter sent via certified or registered mail, return receipt requested. This action is completed by CLS.

- The intent of the inquiry and notification letter is to formally advise the tribe that we are involved with a child who has been alleged or shown by documentation to be associated with their tribe (or a tribal member) and we are making inquiry as to the child's and the parent's status with their tribe. If the tribe denies the child is a member or eligible for membership in their tribe, the case does not meet ICWA criteria for that tribe. If the tribe confirms enrollment (or membership), or eligibility, the case will meet ICWA criteria and ICWA requirements must be applied.
- **Telephone contact** with the tribe is **strongly encouraged** and often expedites the process of connecting with the tribe at the earliest point possible and avoids unnecessary delays in permanency planning.
- **The following two tribes have reservations located in Florida, or near Florida borders, and should be contacted immediately if a child known or believed to be a member of one of these tribes is identified during an investigation or in a case management services case:**

Miccosukee Tribe of Indians of Florida
 Jennifer Prieto, Director of Social Services
 Post Office Box 440021
 Miami, Florida 33144
 Telephone: (786) 409-1241 FAX: (305) 894-5232
 Email: jenniferp@miccosukeetribe.com

Seminole Tribe of Florida
 Shamika Beasley, Ed.S., Advocacy Administrator
 Family Services Department
 6363 Taft Street, Suite 300B
 Hollywood, Florida, 33024
 Telephone: (954) 965-1314 ext. 10372; FAX: (954) 965-1304
 Email: shamikabeasley@semtribe.com

- Telephone contact does not, however, take the place of **formal notification in writing** to the tribe and an official response from the tribe regarding the parent and child's membership or eligibility for membership with the tribe. **The tribe's formal response will determine whether or not ICWA protections will be applied.**
- The tribe's official response, whether in person or in writing, regarding the child's membership or eligibility for membership in their tribe, and the court's subsequent findings with regard to ICWA eligibility, **must be provided to the courts.**
- Timely and consistent identification of children eligible for the protections of ICWA complies with federal mandates regarding American Indian and Alaskan Native children and prevents harmful disruption, inappropriate placements, and avoidable delays in permanency planning for children.

PROCEDURE:

1. Check the case file and **FSFN** for any previous forms or information regarding American Indian ancestry or ICWA eligibility that may exist. For new children coming into care, or children returning to care, a new eligibility form must be completed if the information is more than twelve months old.
2. **Form CF-FSP 5323 (available in DCF Forms at <http://www.dcf.state.fl.us/DCFForms/Search/DCFFormSearch.aspx>)** must be completed and signed by each birth parent of each child. The related children may be listed together on the form signed by their birth parents. The child welfare professional shall assist the parent in completing the form. Do not allow the parent to take the form home for completion. When unable to locate a birth parent, document efforts to find the absent parent in the case file and in **FSFN**. Attempts should be made to contact the relatives of the absent parent if tribal affiliation is alleged. Document the identity and relationship of the “informant” if other than the parent. All efforts of locating the absent parent must be filed with the courts.
3. If the birth parents respond “no” to the Indian ancestry question, have the parent sign and date the form **CF-FSP 5323**, file in the case record and with courts, and document the response in **FSFN**.
4. If a birth parent responds “yes” to any known or suspected American Indian or Alaskan Native ancestry, a diligent search for the child’s tribe and a subsequent inquiry to determine whether ICWA protections apply must be completed. Discuss with the family any information that will identify a tribe, or tribes, to which the parent and/or child may have connections, affiliation, or membership.
5. If the parent or child is already enrolled or a member of a tribe, obtain a copy of the tribal enrollment or membership card, if available, or indicate the enrollment or membership number on the **CF-FSP 5323**. If proof of enrollment or membership is not available, complete Page 1 of the **CF-FSP 5323**, record any information that will support and assist the search process, and include any relatives who may have helpful information. Be as thorough as possible in completing the **Parent History Chart** for the birth parent as the tribe(s) will use this information to determine eligibility for enrollment or membership of the child and/or birth parent. The family will likely not have all the information requested but gather as much as possible.
6. When the **CF-FSP 5323** is complete, provide a copy to the person who will be conducting the diligent search process. Do not alter Page 1 of the original signed form. *Copies* of the form can be altered as needed in conducting the search. The final altered copy can be added to the case file as supporting documentation. Some tribes require separate copies for each child.
7. When taking custody of any child with stated possible ICWA eligibility through one of the two federally recognized tribes located in Florida or the federally recognized tribe located in southern Alabama and the birth parent or relative identifies enrollment or membership in, or connections to one of those tribes (that is, the **Seminole Tribe of Florida** or the **Miccosukee Tribe of Indians of Florida**), contact the **Designated Tribal Agent for Indian Child Welfare Act Service of Notice** (found in the current **Federal Register**) for that tribe immediately. When geographically possible, tribal representatives should be contacted in time to attend any hearing involving an eligible or potentially eligible child and

should always be noticed as quickly as possible. If out-of-state or at a great distance, and if such appearance is approved by the court, tribal representatives may attend hearings by telephone.

When transferring the responsibility of placement and care of an Indian child to a tribal Title IV-E agency or a tribe with a Title IV-E agreement, the child's eligibility under Title IV-E and Medicaid shall not be affected.

8. Any information regarding American Indian or Alaskan Native ancestry and possible eligibility for ICWA protections must be documented on the relevant screens in **FSFN**.
9. Cases involving eligible or potentially eligible children under ICWA should be brought to the attention of legal staff as quickly as possible in order to ensure proper legal notifications and procedures are in place. Once eligibility is established, the tribe must receive formal notification of all proceedings in accordance with ICWA.
10. Children believed or alleged to be eligible for ICWA protections are treated as ICWA eligible until the court finds to the contrary.

