 Department of Children & Family Services <i>Building a Stronger Louisiana</i>	Division/Section	Child Welfare
	Chapter No./Name	4 – Child Protective Services (CPS)
	Part No./Name	5 – Conducting Investigations of Reports of Child Abuse and/or Neglect in Families
	Section No./Name	Conducting Investigations of Reports of Child Abuse and/or Neglect in Families
	Document No./Name	4-590 Investigations and Services with Native American Families
	Effective Date	November 1, 2017

I. STATEMENT OF POLICY

It is the policy of the Department of Children and Family Services (DCFS) that staff is responsible for making efforts to identify Native American/Indian children and families during the Child Protective Service investigation. When it is determined that a child is an Indian child as defined in the Indian Child Welfare Act (ICWA), the provisions of the statute are applicable and shall be adhered to when working with the family.

II. PROCEDURES

The Indian Child Welfare Act (ICWA) is a federal law that seeks to keep American Indian children with their American Indian/Alaska Native families. The law provides structure and requirements for child welfare agencies conduct their work and serve tribal children and families. It also acknowledges and promotes the role that tribal governments play in supporting tribal families. ICWA only applies to an individual who is a member of, or eligible for membership, in a federally recognized tribe.

A. IDENTIFICATION OF NATIVE AMERICAN/INDIAN FAMILIES


1. Obtaining Information about Potential Native American/Indian Families

During investigations, it is the responsibility of the Child Protective Services (CPS) worker to explore if a family identifies itself as Native American/Indian, is actively involved with a Native American/Indian tribe, and/or is of Native American/Indian descent. If any of those are the case, ICWA may be applicable.

A family may identify as Native American/Indian but be unable to verify their tribal membership or affiliation that would be necessary for ICWA to be applicable. In that case, the worker shall initiate efforts to determine the child's tribe and whether or not the child is an Indian child as defined by ICWA.

Potential sources of information about possible Indian heritage of each child include, but are not limited to:

- DCFS records (Section [4-500](#));
- Child's parents and extended family (Section [4-507](#), [4-510](#) and [4-512](#));
- Inquiry in investigation interviews regarding the Indian heritage of each child identified in the CPS report with documentation in the ACCESS investigation case;
- Others who are involved in the family's life (friends, collaterals, providers, etc. in Section [4-520](#), Collateral Contacts);
- Tribe (s);

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- Courts; and
- Bureau of Indian Affairs (BIA).

Documents provided by the family confirming or eliminating tribal membership shall be attached to the case record and filed in the paper case record file.

2. Tribal Identification with Native American/Indian Families

When a family cannot verify tribal membership or are unsure of their tribal affiliation, the worker shall initiate efforts to determine the child's tribe and whether the child is an Indian child as defined by ICWA. This will require the worker to obtain as much as available about:

- Parents and birthdates;
- Grandparents names and birthdates;
- Tribe with which they believe they may have an affiliation; and
- Any other available identifying information about the family that may assist with tribal identification.


The worker will need the information when contacting the Bureau of Indian Affairs (BIA) for their assistance with tribal identification for tribes in Louisiana and nationally.

Refer to CW Chapter 6, [Appendix A ICWA](#) in CW Foster Care Policy for the names and contact information for the Louisiana federal and state recognized tribes. In addition to the federal and state recognized tribes, there are also Louisiana tribes that are not federal or state recognized tries. Refer to <http://www.aaanativearts.com/louisiana-indian-tribes#axzz4prLjmXsi> for information on both recognized and unrecognized Louisiana tribes.

3. Designation of the Child's Tribe

The worker shall:

- Immediately gather information about the tribal affiliation, membership, and enrollment status, if that information is not already available; and
- If a parent is a member of a federally recognized tribe, the child may assumed to be eligible for membership, however, tribes have the right to determine who is a member of their tribe, if tribal membership has not already been determined.

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If the Indian child is a member or eligible for membership in only one tribe, that tribe should be designated as the Indian child's tribe and the information documented in the case record. If an Indian child is a member or eligible for membership in more than one tribe, ICWA requires that the Indian tribe with which the Indian child has the more significant contacts be designated as the Indian child's tribe.

The following may be considered when determining tribal designation:

- Preference of the parents for membership of the child;
- Length of past domicile or residence on or near the reservation of each tribe; and
- Tribal membership of custodial parent or Indian custodian.

4. Identification of Non-Tribal Child

If it is determined that a child is neither a member nor eligible to be a member of a federally recognized tribe, ICWA is not applicable to the investigation or court proceedings. The investigation may then proceed in accordance with policy and procedures for family investigations being culturally sensitive to their Native American/Indian identity.

5. Tribal Notification


When it is determined that ICWA will be applicable the worker is responsible for:

- Notifying the family's affiliated tribe via telephone and by mail with a certificate of mailing. Each recognized tribe within Louisiana has a Memorandum of Understanding with the local office in the area of the tribal location that outlines how DCFS shall intervene with their ICWA eligible families.
- This must occur as soon as possible but within 24 hours of knowledge of the child's known or potential tribal affiliation; and
- The CPS worker is to provide the parent/caretaker with the DCFS CW [ICWA-1, Rights under ICWA](#) form. The worker shall also document the form provision and discussion with the parent/caretaker in the case record.

When a child is a member of a non-federally recognized tribe, the family may contact their tribe to request services for the child. The worker may not contact the tribe.

B. REPORTS OF ABUSE OR NEGLECT OF A CHILD LIVING ON TRIBAL/STATE LAND

Tribal land is a sovereign nation and, therefore, the worker must notify the tribe before entering to initiate the investigation. There are four federally recognized tribes in Louisiana with reservations. They are the Chitimacha Tribe of Louisiana (Charenton, LA); Coushatta Tribe

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((Elton, LA); Jena Band of Choctaw Indians (Jena, LA); and the Tunica-Biloxi Indian Tribe (Marksville, LA).

1. Notification of Tribe

When it is learned that a CPS investigation includes entering tribal land, the CPS worker immediately notifies the tribe to allow the tribe to assess the report and provide appropriate child welfare services. This must occur as soon as possible, but within 24 hours of knowledge of the child's tribal affiliation and prior to the initiation of the investigation in accordance to the response priority.

A tribal representative is given the opportunity to accompany the CPS worker during the investigation or the tribe may choose to complete the investigation without DCFS CPS.

When the tribe has no Indian child welfare program the referral is made to the appropriate [Bureau of Indian Affairs \(BIA\)](#) office via telephone and by mail with certificate of mailing of their right to intervene.

When ICWA is applicable, the tribe is notified of the investigation findings and whether the child may be removed from the home. Tribal resources for assistance and services to the child/family should begin as early as possible in the investigation when the tribe is interested in providing services.

2. Tribal Responsibility for Investigation


When it is determined that the child's tribe will proceed with the investigation, Refer to CW Policy [1-510, Release of Information to Outside Sources](#), for the permitted release of report information to the tribe.

The DCFS CPS investigation is closed. The ACESS Investigation case is clearly documented and closed Special Closures/Administrative Closure.

3. DCFS/CPS Investigations on Tribal/State Land

When DCFS conducts the investigation, the worker is responsible for the following:

- Staff should consult with the Child Welfare Manager or Area Director regarding the Memorandum of Understanding for the tribe and the procedures for investigating abuse and/ or neglect of a tribal child.
- Including the Indian child welfare (ICW) worker in the investigation, when possible;

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- Conducting the investigation following all applicable CPS policies, when an ICW worker is not available to participate in the investigation;
- Notifying the appropriate tribe as a courtesy, when a report is received involving the non-Indian child on tribal land;
- Asking the tribe whether an alleged child victim is or was a ward of the tribal court and documenting the response on the Interview/Collateral page in the ACCESS investigating case; and
- Verbally notifying the child's tribe, as soon as possible, but no later than the next business day when a child is removed from the home.

C. INVESTIGATIONS INVOLVING INDIAN CHILD NOT RESIDING ON TRIBAL LAND

ICWA is also applicable to Indian children who do not reside on tribal land. The tribe still has the right to take responsibility for the investigation; or, may elect to be notified of investigation findings and provide services to the child and family.

D. ICWA REQUIREMENTS INVOLVING ACTIVE EFFORTS TO ASSIST FAMILIES

ICWA mandates the Department to make active efforts to prevent the removal of an Indian child from his or her parent or Indian custodian.

Active efforts are more intensive than “reasonable efforts” and include early participation and consultation with the child’s tribe in all decision making and case planning. If the Department has reason to believe that a family is Indian, they must be treated as such unless and until it is determined that the family is not eligible for ICWA protections.


According to federal guidelines, required ICWA active efforts include:

- Referral to culturally appropriate rehabilitative services;
- Identification of available family and tribal resources;
- Use of extended family and native American community members (includes more than just biological family); and
- Case collaboration with the tribe.

They apply whether or not the child’s tribe is involved in the custody proceedings.

Active efforts may also include:

- Engaging the Native American/Indian child; extended family members, and/or the child’s custodian(s);

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- Conducting a diligent search for the Native American/Indian child's extended family members for assistance and possible placement;
- Taking into account the Native American/Indian child's tribe's prevailing social and cultural conditions and way of life, and requesting the assistance of representatives designated by the Native American/Indian child's tribe with substantial knowledge of the prevailing social and cultural standards;
- Offering and employing all available and culturally appropriate family preservation strategies; and
- Completing a comprehensive assessment of the circumstances of the Native American/Indian child's family, with a focus on protective capacities.


The CPS worker should document his efforts to comply with ICWA in the ACCESS CPS Investigation case. Additionally, the worker in consultation with the supervisor should consider an emergency referral to Family Services when this may prevent a removal of the child. Refer to CW Section [4-803, Emergency Services](#).

E. ICWA GUIDELINES FOR REMOVAL AND NOTIFICATION OF COURT PROCEEDINGS

In the event that active efforts to prevent removal are not successful and the removal of a child from the family's home is required, the **following are ICWA guidelines must be followed for ICWA children:**

- The emergency removal and emergency placement of an Indian child is allowed only as necessary to prevent imminent physical damage or harm to the child.
- This requirement applies to all Indian children regardless of whether they are domiciled or reside on a reservation. This does not, however, authorize the Department to remove a child from a reservation where a tribe exercises exclusive jurisdiction, unless there is a written agreement in place between the tribe and DCFS authorizing DCFS to do so.
- If a child is domiciled or resides on a reservation but is temporarily off site, the Department can get involved and make decisions regarding the child to the extent necessary to prevent imminent physical damage or harm to the child.

The worker and supervisor shall consult with the Regional Bureau of General Counsel and follow the procedures in CW Section [4-750](#), Court Procedures Applicable to ICWA.

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F. NOTIFICATION TO THE US DEPARTMENT OF THE INTERIOR

Copies of notices to tribes shall be sent to the United States Department of the Interior, Bureau of Indian Affairs, and the appropriate federal Area Director.

The United States Secretary of the Interior may be identified and contacted at <http://www.bia.gov>; Mailing Address – Department of the Interior, 1849 C Street N.W., Washington DC 20240; Phone – (202) 208-3710.

The Bureau of Indian Affairs (BIA) oversees Native American legislation and may be contacted concerning a child with whom DCFS is involved. Louisiana is a part of the Eastern Region, contact may be directed to: Eastern Regional Director, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, TN 37214, Phone (615) 564-6500.

The Chief of the Human Services Division at the main BIA Office may be contacted at (202) 513-7621, if there is concern about the appropriate BIA regional office for contact regarding a particular tribe that is not a part of the Eastern Region.

III. FORMS AND INSTRUCTIONS

[CW ICWA-1, Rights under ICWA](#)

IV. REFERENCES

[Public Law 95-608 \(Indian Child Welfare Act\)](#)

[Public Law 103-382 \(Multiethnic Placement Act\)](#)

Indian Child Welfare Act (ICWA): <http://www.icwa.org>

National Indian Child Welfare Association: <http://www.nicwa.org>

Bureau of Indian Affairs (BIA) <http://www.bia.gov/cached>