



ORICWA Technical Assistance Guide for CRB Volunteers

Introduction

Congress passed the [Indian Child Welfare Act](#) (ICWA) in 1978 in response to concerns that a high percentage of Indian families were being broken up by the removal of their children by nontribal public and private agencies. Despite the provisions of ICWA and federal guidance for its implementation, the Oregon Department of Human Services (ODHS) data continued to show disproportionate placement of Indian children in foster care.

An audit of ODHS compliance with ICWA in 2019 found a compliance rate of less than 25% in the areas of assessment, removal and permanency. In 2020, the Oregon Legislature passed [House Bill 4214](#), the Oregon ICWA (ORICWA), to strengthen and create new protections for Indian children in Oregon law. Part of those protections included new findings at Citizen Review Board (CRB) reviews. The following year, [Senate Bill 562](#) passed as a “clean up” of the original bill. Among other changes, it applied ORICWA to voluntary placement proceedings, made changes to the findings at CRB reviews, and created a new type of adoption and permanency plan called tribal customary adoption.

The ORICWA Findings

- When confirming ICWA status at the beginning of a review, ask **“Is there a reason to know the child is an Indian child?”** or **“Is there a reason to know the children are Indian children?”**

“Indian Child” is defined as any unmarried person who has not attained 18 years of age and: **(a)** is a member or citizen of an Indian tribe; or **(b)** is eligible for membership or citizenship in an Indian tribe and is the biological child of a member of an Indian tribe.

A “reason to know” is meant to be a low bar, and ODHS is expected to follow up on any information that indicates the child or family has possible tribal heritage. Only a tribe can determine whether the child is a member or citizen or eligible for membership.

CRB must treat a child as an Indian child if:

- ◇ Anyone present at the review states there is reason to know the child is an Indian child, and

- ◇ Nobody present can verbally confirm that the court determined the child does not meet the definition of an Indian child.

On rare occasions, new information about possible Indian heritage is revealed at the review. If the court previously determined the child does not meet the definition of an Indian child, the board does not need to apply active efforts or make the additional ORICWA findings under Findings 5 and 7 during that review. However, the board should make a recommendation that ODHS update the ICWA inquiry based on the new information.

The rest of the ORICWA findings are only made if there is reason to know the child is an Indian child. Please note these findings are to be made in addition to the regular findings, not in place of any of them.

- Under Finding 5, if the permanency plan at the time of the review is something other than reunification, **“Has ODHS made active efforts to place the Indian child in a timely manner in accordance with the placement preferences?”**

To make this finding, the board has to evaluate ODHS efforts to permanently place the child according to the placement preferences under ORICWA. What placement preferences apply will depend on whether parental rights have been terminated and the child’s permanency plan. Here’s an overview of the placement preferences that apply under state and federal law.

Oregon ICWA requires that the Indian child be placed in the least restrictive setting that:

- ◇ Most closely approximates a family, taking into consideration sibling attachment;
- ◇ Allows the Indian child’s special needs, if any to be met;
- ◇ Is in reasonable proximity to the Indian child’s home, extended family or siblings; and
- ◇ Is in accordance with the order of preference established by the Indian child’s tribe.

Ask the parties for information regarding the tribe’s placement preferences. If the tribe has not established placement preferences, the following preferences apply:

When the parental rights of the Indian child’s parents have been terminated OR anytime the permanency plan is Adoption, Tribal Customary Adoption, or Guardianship, the order of preference is

1. A member of the child’s extended family
2. Other members of the Indian child’s tribe
3. Other Indian families

When the parental rights of the Indian child’s parents have not been terminated, except when the permanency plan is Adoption, Tribal Customary Adoption, or Guardianship, the order of preference is

1. A member of the child’s extended family
2. A foster home licensed, approved or specified by the child’s tribe
3. A foster home licensed or approved by a licensing authority in this state and in which one or more of the licensed or approved foster parents is an Indian
4. An institution for children that has a program suitable to meet the Indian child’s needs and is approved by an Indian tribe or operated by an Indian organization

- Under Finding 7, if the permanency plan at the time of the review is reunification and the child is placed in a home outside the placement preferences, **“Has ODHS continued to maintain the relationship of the Indian child with potential permanent placement preferences? If not, “Has ODHS continued to search for a permanent placement that complies with the placement preferences?”**

These findings are confusing because there’s a lot of “ifs” and ORICWA isn’t clear what placement preferences to apply. Don’t get frustrated. Even some ORICWA experts find these findings confusing. Here are some steps to help guide you.

Step 1—Determine if the child is placed in a home outside the placement preferences for a case where parental rights have not been terminated and the permanency plan is reunification.

Step 2—If the answer to Step 1 is yes, determine if ODHS has continued to maintain the relationship of the Indian child with potential permanent placement preferences, which would be the same as those for adoptions, tribal customary adoptions, and guardianships.

Step 3—If the answer to Step 2 is no, determine if ODHS has continued to search for a permanent placement that complies with the placement preferences. Again, apply the placement preferences for adoptions, tribal customary adoptions, and guardianships.

A New Type of Adoption and Permanency Plan

Beginning January 1, 2022, Oregon courts are required to consider tribal customary adoption as a permanency plan for Indian children when reunification is not possible. These are adoptions of Indian children, by and through the tribal custom, traditions or law of the child’s tribe. They can be done without termination of parental rights and do not require the consent of the Indian child or the child’s parents. The court must determine this type of adoption is in the child’s best interest and the child’s tribe must also consent.

SB 562 lays out processes for tribal customary adoptions, including but not limited to:

- ◇ ODHS must provide the Indian child’s tribe and proposed tribal customary adoptive parents with a written report of the child that includes medical background of the child’s parents, if known; and the child’s education information, developmental history and medical background, including all known diagnostic information, current medical reports and any psychological evaluations;
- ◇ The Indian child’s tribe must conduct a home study of the proposed tribal customary adoptive placement; and
- ◇ The order or judgment of tribal customary adoption must include a description of the ongoing contact, if any, between the child and parents.