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Ohio Administrative Code

Rule 5180:2-53-01 Definitions related to the Indian Child Welfare Act (ICWA).

Effective: February 1, 2018

(A) "Active efforts" means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child custody proceeding, active efforts involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and tribe. Active efforts shall be tailored to the facts and circumstances of the case and may include, for example:

(1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;

(2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;

(3) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;

(4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;

(5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's tribe;

(6) Taking steps to keep siblings together whenever possible;

(7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;

(8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;

(9) Monitoring progress and participation in services;

(10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available; and

(11) Providing post-reunification services and monitoring.

(B) "Agency" means a nonprofit, for-profit, or governmental organization and its employees, agents, or officials that performs, or provides services to biological parents, foster parents, or adoptive parents to assist in the administrative and social work necessary for foster, preadoptive, or adoptive placements.

(C) "Child custody proceeding" means and includes the following:

(1) Any action, other than an emergency proceeding, that may culminate in one of the following outcomes:

(a) Foster care placement, which is any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) Termination of parental rights, which is any action resulting in the termination of the parent-child relationship;

(c) Preadoptive placement, which is the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; or

(d) Adoptive placement, which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(2) A status offense proceeding that results in a child being placed into foster care or another out-of-home placement.

(D) "Continued custody" means physical custody, legal custody or both, under any applicable tribal law, tribal custom or state law, that a parent or Indian custodian already has or had at any point in the past.

(E) "Custody" means physical custody, legal custody or both, under any applicable tribal law, tribal custom or state law. A party may demonstrate the existence of custody by looking to tribal law or tribal custom or state law.

(F) "Domicile" means:

(1) For a parent or Indian custodian, the place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere.

(2) For an Indian child, the domicile of the Indian child's parents or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's custodial parent.

(G) "Emergency proceeding" means and includes any court action that involves an emergency removal or emergency placement of an Indian child.

(H) "Extended family member" is defined by the law or custom of the Indian child's tribe or, in the

absence of such law or custom, is a person who has reached age eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent.

(I) "Indian" means any person who is a member of an Indian tribe, or who is an Alaskan native who is a member of a regional corporation as defined by the Alaska Native Claims Settlement Act, 43 U.S.C. 1606 (2008).

(J) "Indian child" means any unmarried person under age eighteen and either:

(1) Is a member or citizen of an Indian tribe; or

(2) Is eligible for tribal membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe, or an Alaskan native who is a member of a regional corporation as defined by the Alaska Native Claims Settlement Act.

(K) "Indian child's tribe" means:

(1) The Indian tribe in which an Indian child is a member or eligible for membership; or

(2) In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe described in 25 C.F.R 23.109 (2016).

(L) "Indian custodian" means any Indian who has legal custody of an Indian child under applicable tribal law or custom or under applicable state law, or to whom temporary physical care, custody, or control has been transferred by the parent of the child.

(M) "Indian foster home" means a foster home where one or more of the licensed or approved foster parents is an "Indian" as defined in 25 U.S.C. 1903(3) (1978).

(N) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians or a tribe, or a majority of whose members are Indians.

(O) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians federally recognized as eligible for the services provided to Indians by the secretary because of their status as Indians, including any Alaska native village as defined in section 3(c) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(c) (2000).

(P) "Involuntary proceeding" means a child custody proceeding in which the parent does not consent of his or her free will to the foster care, preadoptive, or adoptive placement or termination of parental rights or in which the parent consents to the foster care, preadoptive, or adoptive placement under threat of removal of the child by a state court or agency.

(Q) "Parent or parents" means any biological parent or parents of an Indian child, or any Indian who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include an unwed biological father where paternity has not been acknowledged or established.

(R) "Qualified expert witness" means a person who is qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the Indian child's tribe. The agency may request the assistance of the Indian child's tribe or the bureau of Indian affairs (BIA) office serving the Indian child's tribe in locating persons qualified to serve as expert witnesses. The social worker regularly assigned to the Indian child shall not serve as a qualified expert witness in child custody proceedings concerning the child.

(S) "Reservation" means Indian country as defined in 18 U.S.C. 1151 (1949) and any lands, not covered under that section, title to which is held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the U.S. against alienation.

(T) "Secretary" means the secretary of the interior or the secretary's authorized representative acting under delegated authority.

(U) "State court of competent jurisdiction" means an Ohio juvenile court.

(V) "Status offenses" mean offenses that would not be considered criminal if committed by an adult;

they are acts prohibited only because of a person's status as a minor.

(W) "Tribal court" means a court with jurisdiction over child custody proceedings and which is either a court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe vested with authority over child custody proceedings.

(X) "Tribal government" means the federally recognized governing body of an Indian tribe.

(Y) "Upon demand" means that the parent or Indian custodian can regain custody simply upon verbal request, without any formalities or contingencies.

(Z) "Voluntary proceeding" means a child custody proceeding that is not an involuntary proceeding, such as a proceeding for foster care, preadoptive, or adoptive placement that either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a state agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.