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Ohio Administrative Code

Rule 5180:2-53-05 Voluntary agreement for temporary custody of Indian child.

Effective: March 15, 2023

(A) A public children services agency (PCSA) or private child placing agency (PCPA) may accept a voluntary agreement for temporary custody of an Indian child from a parent, guardian or Indian custodian for the purpose of placing the child in substitute care. The agreement shall:

(1) Be executed upon a completed JFS 01645 "Agreement for Temporary Custody of Child";

(2) Be recorded before a juvenile court, or a tribal court, if jurisdiction has been transferred there; and

(3) Include the tribal enrollment number for the parent and for the Indian child, when known, or some other indication of the child's membership in the tribe; the name and address of the person or entity who arranged the placement; the name and address of the prospective foster parents, if known at the time; and any conditions to the agreement.

(B) Where confidentiality is requested or indicated, execution of the agreement shall be made before a court of competent jurisdiction, but is not required to be made in a session of court open to the public.

(C) The agency shall submit a notification of the voluntary agreement to the tribe's designated agent or tribal court pursuant to rule 5101:2-53-03 of the Administrative Code. The tribe retains the right to participate as an interested party or to intervene at any point, even if the tribe has declined to be involved.

(D) An agency shall abide by the agreement for temporary custody requirements set forth in rules 5101:2-42-06, 5101:2-42-07 and 5101:2-42-08 of the Administrative Code, and shall document in the child's case record that:

(1) The agreement for temporary custody was not executed until at least ten days after the birth of

the Indian child. Any agreement entered into prior to, or within ten days after, birth of the Indian child shall not be valid.

(2) The terms and consequences of the agreement for temporary custody were fully explained in detail prior to the agency accepting the agreement. If the agency has reason to believe that the parent or Indian custodian will not understand the agreement for temporary custody because of possible limited English proficiency, a copy of the agreement shall be sent to the bureau of Indian affairs (BIA) area office nearest to the residence of that person, and a request made of BIA for assistance in locating and obtaining the name of a qualified translator or interpreter. The voluntary agreement for temporary custody shall not be executed until it has been translated into the language that the parent or Indian custodian best understands.

(3) The parent or Indian custodian is requesting the agency take custody and provide services because one of the following conditions exists:

(a) The child cannot remain at home due to a temporary crisis inthe family, and cannot safely stay with a member of the extended family oranother responsible adult well known to the child.

(b) The child needs to be placed outside the home due to problemsin the family that could compromise the safety of a family member, and aplacement of limited duration with assistance from the agency providingintensive services that are likely to reunite the family and reduce the safety concerns is needed.

(4) The parent or Indian custodian is immediately and temporarily unable to fulfill his or her parental responsibilities and this inability will be alleviated with short-term placement.

(E) Any parent or Indian custodian may request the termination of the voluntary agreement under law for any reason at any time, orally or by written notification and, upon such request, the child shall be returned to the parent or Indian custodian as soon as practicable.

(F) If a parent or Indian custodian requests the termination of the voluntary agreement and the agency has reason to believe the child will be unsafe if returned home to the parent or Indian custodian, the agency shall submit a request to the juvenile court requesting temporary or permanent

custody.

(G) If anything in this rule conflicts with the requirements in Chapter 5101:2-42 of the Administrative Code, the agency shall follow the requirements outlined in this rule, or whichever rule favors the tribe.