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## GENERAL MEMORANDUM 15-022

### Bureau of Indian Affairs Issues Indian Child Welfare Act Guidelines

On February 25, 2015, the Bureau of Indian Affairs (BIA) published a set of guidelines for state courts and child welfare agencies concerning the implementation of the Indian Child Welfare Act (ICWA). News of the final guidelines was announced the preceding day by Assistant Secretary – Indian Affairs Washburn at a National Congress of American Indians Executive Council Winter Session. The 2015 guidelines supersede those issued in 1979 when ICWA was newly enacted. The BIA states: "Although there have been significant developments in ICWA jurisprudence, the guidelines have not been updated since they were originally published in 1979. Much has changed in the 35 years since the original guidelines were published, but many of the problems that led to the enactment of ICWA persist." The new guidelines may be found here: <http://www.gpo.gov/fdsys/pkg/FR-2015-02-25/pdf/2015-03925.pdf>

The BIA notes that the new guidance reflects input from Indian and judicial organizations, listening sessions in Indian Country, and the recommendations of the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence.

Among the new provisions in the guidance are its extension beyond state courts to child welfare agencies; detailed guidance on what may constitute "active efforts" in implementing ICWA; limitations on what constitutes "good cause" for not following transfer of jurisdiction and placement preferences; limitations on emergency removals and emergency placements of Indian children; and expansion of efforts to assist adult Indian adoptees in establishing tribal membership.

We attach a notice from the National Indian Child Welfare Association which is hosting a webinar Friday, March 13, at 10 a.m. Pacific time. The notice provides instructions for joining the webinar. Tribal and state child welfare personnel, tribal and state attorneys and judges and others are encouraged to join the webinar.

Please let us know if we may provide additional information or assistance regarding the guidelines for implementation of the Indian Child Welfare Act.

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Inquiries may be directed to:  
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# NEWS *from* NICWA



NICWA

National Indian Child Welfare Association  
Protecting Our Children • Preserving Our Culture

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March 9, 2015

## **BIA Announces New ICWA Guidelines** ***NICWA Webinar to Tell You Everything You Need to Know***

A major development in tribal child welfare policy was announced on February 25, 2015. The Bureau of Indian Affairs announced that it had revised--effective immediately--the *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings* for the first time since 1979. **NICWA is hosting a [free webinar](#) on Friday, March 13, 2015, at 10 a.m. PDT to explain the revisions.**

As a NICWA supporter, you know that we have vigorously advocated for these changes in numerous policy meetings, briefs to policymakers, and federal testimony.

Receptive to our recommendations, the BIA hosted a listening session on the ICWA guidelines at last year's NICWA's annual conference because they knew *your* input was vital to the process.

You spoke and they listened. This is an accomplishment we can all be proud of.

The new guidelines are intended to address some of the issues that states and public and private agencies have grappled with for the past 36 years. For example, the revised guidelines:

- Require that state courts and agencies ask whether ICWA applies in every child custody proceeding
- Provide clear examples of "active efforts" state courts and agencies must employ to provide services and rehabilitative programs designed to prevent removal and encourage reunification



*Photo courtesy of stockmonkeys.com*

- Require that "active efforts" must begin the moment a case has the potential to lead to removal and should be provided during the investigation of a child's ICWA-eligibility
- Change the process for determining a child's tribe when the child is associated with multiple tribes
- Clarify how ICWA applies in the emergency removal and placement of Indian children
- Distinguish that the Adoption and Safe Families Act exceptions to reunification efforts do not apply to ICWA proceedings
- Highlight the importance of consideration of tribal law and custom in determining whether ICWA applies
- Define "continued custody" as physical and/or legal custody a parent has or has had at any point in the past
- Limit the "good cause" definition with regard to transfer of cases from state to tribal court
- Clarify the requirements that must be met to apply the protections of ICWA to an unwed father
- Conclude that the "existing Indian family" doctrine does not preclude ICWA's application
- Explain notice requirements and steps necessary to provide proper notice to tribes
- Prefer qualified expert witnesses that have deep connections with culture and customs
- Require private and voluntary adoptions to identify whether ICWA applies and follow its requirements
- Clarify that only the tribe has the power to determine a child's membership status (no longer allows the Bureau of Indian Affairs to make a decision in lieu of the tribe)
- Clarify that a child is not required to have a certain blood quantum and need not be included on written membership rolls to be ICWA-eligible
- Limit "good cause" exceptions to placement preferences

As you can tell from these highlights, the revised guidelines will do much to improve ICWA compliance and protect Indian children and families.

We encourage ICWA advocates, tribal and state child welfare workers, tribal and state attorneys, parents' attorneys and judges to take the time to [read the full updated guidelines](#). We also encourage discussion of these important changes to regularly scheduled meeting agendas, to hold new meetings and trainings to discuss these guidelines' effects on their practice, and to disseminate these guidelines widely.

A link to the full *Guidelines for State Courts and Agencies in Indian Child Custody Proceedings* is available on our [website](#).

**NICWA will discuss the changes described above and provide a more in-depth analysis of our potential to use these revised guidelines to support Indian children and families in a free webinar on Friday, March 13, 2015, at 10:00 a.m. PDT. To register for this webinar click [here](#).**

With your continued help, NICWA will build momentum toward creating ICWA regulations that will have the force of law and will better protect Indian families.

[http://myemail.constantcontact.com/ICWA-Guidelines-Revised-for-First-Time--NICWA-Webinar-Scheduled.html?soid=1102238947047&aid=XZI\\_D0BwRBA](http://myemail.constantcontact.com/ICWA-Guidelines-Revised-for-First-Time--NICWA-Webinar-Scheduled.html?soid=1102238947047&aid=XZI_D0BwRBA)