

# APPENDIX - F

## ALL COUNTY LETTER & ALL COUNTY INFORMATION NOTICE

1.  
**ALL COUNTY  
LETTER 89-26**

DEPARTMENT OF SOCIAL SERVICES  
744 P Street, Sacramento, CA95814



**March 24, 1989**

ALL COUNTY LETTER NO. **89-26**

TO: ALL COUNTY WELFARE DIRECTORS  
ALL PUBLIC AND PRIVATE ADOPTION AGENCIES  
ALL SDSS ADOPTIONS DISTRICT OFFICES

SUBJECT: 1. REVISED INDIAN CHILD WELFARE ACT PROCEDURES  
SUPERSEDES ACL No. 85-113, DATED NOVEMBER 8, 1985

2. INDIAN CHILD WELFARE ACT (ICWA) - TRIBAL  
NOTIFICATION

The purpose of this letter is threefold:

**First**, it is to inform County Welfare Departments (CWDs) and adoption agencies of recent information from the Bureau of Indian Affairs (BIA) regarding the applicability of the Indian Child Welfare Act (ICWA) to children who are members of non-federally recognized tribes.

**Second**, it informs adoption agencies of changes in procedures necessary to request ICWA determinations for children who are in adoption planning. The latter changes were agreed upon between the BIA and the State Department of Social Services' (SDSS) Adoptions Branch and will necessitate revisions to current ICWA adoption procedures.

**Third**, in response to questions received by the Department, this letter provides clarification on when the federally recognized Indian tribe is to be notified of pending adoption proceedings which are subject to provisions of the ICWA.

**1. REVISED INDIAN CHILD WELFARE ACT PROCEDURES**

The major change which impacts both adoption agencies and CWDs which provide services to children who have possible Indian

heritage regards the applicability of the ICWA to children that are members of non-federally recognized Indian tribes. The BIA recently provided the Department with a new interpretation of "Indian Child" issued by the U.S. Department of Interior, Washington, D.C., which states that children who are members of non-federally recognized Indian tribes are not eligible for the protections of the ICWA. A listing of federally recognized tribes is contained in the Federal Register, Volume 51, No. 132, dated Thursday, July 10, 1986. Copies can be obtained by writing to the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371. For tribes aboriginal to California which do not **appear on** this list, the BIA Agency Office **will determine whether the** tribe is federally recognized for purposes of the ICWA.

For CWDs, this means that Child Welfare Services/Indian Child Welfare Act regulations must be followed only when providing services to Indian children who belong to, claim membership in, or who are believed to be eligible for membership in, a federally recognized Indian tribe. When child welfare services (CWS) are provided to Indian children of non-federally recognized Indian tribes, all other CWS regulations are to be followed; the only change is that the specific ICWA-related regulations do not apply. Adoption agencies are still required by California Civil Code Section 224a to request a Certificate of Degree of Indian Blood (CDIB) for every child whose Indian heritage has been verified, regardless of whether or not the ICWA applies to the child.

Simply stated, an Indian child may not be subject to the requirements of the ICWA, yet still be eligible for a CRIB.

The second change is that effective immediately the Department's Adoptions Branch will decide if there is sufficient information on the AD 4311 with which to determine the ICWA's applicability or eligibility for a CRIB. This determination was previously made by the BIA Sacramento Area Office before they forwarded the information on to the tribe, BIA Agency Office or out-of-state Area Office. If there IS NOT sufficient information, the Department will return the form to the public/private adoption agency stating there is insufficient information to determine Indian heritage and that a CDIB is not being requested. If there IS sufficient information, the Department will forward the AD 4311 directly to the Indian tribe or appropriate BIA Agency Office if the designated tribe is federally recognized for determination of the applicability of the ICWA and a CDIB; and to the tribe, BIA Agency Office or out-of-state BIA Area Office for a CDIB only, if the tribe is non-federally recognized.

Listed below are the procedures that must be followed during adoption planning to implement these and other changes agreed upon with BIA. Instructions for County Welfare Departments/County Welfare Services' Programs are enumerated in Section A which have NOT changed. Instructions for adoption agencies are contained in Section B which have changed.

Section A: County Welfare Departments'  
Procedures-Child Welfare Services

- I. The County Welfare Department sends to the BIA Sacramento Area Office:
  - A. Completed SOC 318 form (Request for Confirmation of Child's Status as Indian);

NOTE: The caseworker's name, telephone number (including area code) and complete agency address must be noted in the spaces provided on the SOC 318.

  - B. A photocopy or copy of the child's state-certified birth certificate; and
  - C. A signed and notarized paternity statement of the alleged natural father, if the father is The identified Indian parent.
- II. The BIA Sacramento Area Office:
  - A. Forwards the ICWA referral submitted by the County Welfare Department to the appropriate tribe, BIA agency office, or out-of-state BIA area office;
  - B. Instructs the receiving tribe, BIA agency office or out-of-state BIA area office to respond directly to the County Welfare Department;
  - C. Transmits a copy of the referral letter to the requesting County Welfare Department;
  - D. Does not retain a copy of the ICWA requests but retains only a copy of its referral letter forwarded to the tribe, BIA agency office, or out of-state BIA area office; and
  - E. Does not provide any further monitoring or liaison activity regarding the ICWA case.

- III. Upon receipt of the information forwarded from the BIA Sacramento Area Office, the tribe, BIA agency office, or out-of-state BIA area office:
- A. Reviews the referred information to determine whether the subject child comes within the provisions of the ICWA;
  - B. Requests additional information from the referring County Welfare Department if more information is required to make the IOWA determination; and
  - C. Provides written documentation to the County Welfare Department on the applicability of the ICWA to the designated child.
- IV. The County Welfare Department shall maintain written documentation in the child's case record.

Section B: Adoption Agencies' Procedures

Adoption agencies that provide relinquishment and independent adoptions services shall comply with the following procedures.

- I. Adoption agency sends the State Department of Social Services (SDSS) Adoptions Branch for ever child claiming Indian heritage:
- A. A completed form AD 4311, Information on American Indian Child (Adoption Program), with the caseworker's name, telephone number (including area code), and complete agency address indicated in the spaces provided on the form;
- NOTE: Attached is a list of suggested questions that the caseworker can ask which will assist in completing the AD 4311. These questions were received from the BIA Sacramento Area Office.
- B. A photocopy or copy of the child's birth certificate; and
  - C. A signed and notarized paternity statement of the alleged natural father, if the father is the identified Indian parent.
- II. SDSS Adoptions Branch:

- A. Will review the AD 4311 for completeness;
- B. Will determine whether there is sufficient information for an Indian determination;
- C. If there is NOT sufficient information, the SDSS Adoptions Branch will return the AD 4311 to the adoption agency.
- D. If there IS sufficient information, the SDSS Adoptions Branch will:
  - 1. For federally recognized tribes located outside of California:
    - a. Establish a tracking system on the child for subsequent ICWA verification activities;
    - b. Transmit the AD 4311 and other documents directly to the appropriate tribe, BIA agency office or out-of-state BIA area
    - c. Transmit a copy of the referral letter to the requesting adoption agency;
    - d. Instruct the receiving tribe, BIA agency office, or out-of-state BIA area office to respond directly to the adoption agency;
    - e. Retain a copy of the ICWA referral and supporting documents and a copy of its referral letter forwarded to the tribe, BIA agency office, or out-of-state BIA area office; and
    - f. Provide no further monitoring or liaison activity on the case.
  - 2. For non-federally recognized tribes located outside of California:
    - a. Establish a tracking system on the child for subsequent CDIB verification activities; and
    - b. Inform the adoption agency that the tribe indicated for the subject child is a non-federally recognized tribe and, **therefore**, the child is not subject to the provisions of the ICWA; however, the AD 4311 is being forwarded to the tribe or appropriate BIA agency for the issuance of a CDIB.
  - 3. For tribes aboriginal to California:

- a. Establish a tracking system on the child for subsequent ICWA and CDIB verification activities;
- b. Transmit the AD 4311 and other documents to the appropriate BIA agency office;
- c. Transmit a copy of the referral letter to the requesting adoption agency;
- d. Retain a copy of the ICWA/CDIB referral and a copy of its referral letter forwarded to the BIA agency office; and
- e. Provide no further monitoring or liaison activity on the case.

III. BIA Sacramento Area and other Offices for tribes aboriginal to California:

- A. Determine whether the subject child comes within the provisions of the ICWA;
- B. Acquire additional information if more information is required to make the ICWA/CDIB determination; and
- C. Issue a CDIB.

IV. Upon receipt of the AD 4311 and other documents, the tribe, BIA agency office, or out-of-state BIA agency office coordinates directly with the adoption agency to

- A. Determine whether the subject child comes within the provisions of the ICWA;
- B. Acquire additional information if more information is required to make the ICWA/CDIB determination; and
- C. Issue a CDIB.

V. Adoption agencies must:

- A. Communicate directly with the receiving tribe/agency, as necessary. Adoption agencies may not request the intervention/assistance from the BIA agency office after the ICWA request has been forwarded to the appropriate tribe/agency;
- B. Contact SDSS Adoptions Branch if the agency has not been contacted by the receiving tribe, BIA agency office or out-of-state BIA agency office for children whose tribe is aboriginal to California within 30 days after the date of the transmittal

letter to resolve any other major ICWA-related issues; and

- C. For relinquishment adoptions only, after receipt of the ICWA determination, the adoption agency shall send to SDSS Adoption Branch the AD 90, Supporting Information for Issuance of the Department of Social Services Waiver and Acknowledgement, and all copies of correspondence sent to or received from the tribe or BIA agency office.

Note: SDSS Adoptions Branch cannot issue its "Acknowledgement and Waiver" until a determination whether or not the child is subject to the provisions of the ICWA has been made.

## **2. TRIBAL NOTIFICATION**

How parental rights are terminated in an adoption proceeding determines whether tribal notification is required pursuant to the ICWA. In any adoption proceeding where the parental rights of a parent are being involuntarily terminated by an adoption agency, the child's tribe has a right to be notified if the tribe is federally recognized for purposes of the ICWA.

### **Agency Adoptions Program:**

Section 1911(b) of the ICWA (25 U.S.C., Section 1901-1923) (Indian Tribe -jurisdiction ...transfer...) requires that the court must transfer (in the absence of good cause or objection by either parent) termination of parental rights' proceedings to the jurisdiction of the child's tribe for those Indian children NOT domiciled or residing on the tribe's reservation upon petition of either parent, an Indian custodian or the tribe. The tribal court is permitted to decline the transfer of the jurisdiction.

Section 1911(c) (Indian Tribe Jurisdiction...State Court Proceedings; Intervention) permits both the child's Indian custodian and tribe to intervene in the termination of parental rights proceedings at any point.

Section 1912(a) (Pending Court Proceedings- Notice...) requires that the party (adoption agency) seeking the termination of parental rights to the Indian child must notify the parent or Indian custodian AND the child's tribe by registered mail of the pending proceedings and of their right to intervene.

**Independent Adoptions Program:**

Section 1911(b) see above. This section permits the biological parent of the Indian child to petition for the transfer of the proceedings to the tribal court. While this is unlikely to occur in an independent adoption, the parent does have this right under the ICWA and can petition the court for a transfer of jurisdiction.

Sections 1911(c) and 1912 (see above) do not apply to an independent adoption proceeding unless court action is taken to involuntarily terminate the parental rights of any parent. If a Civil Code (CC) Section 232 or 7017 action is taken on any parent, the adoption becomes an involuntary proceeding per the ICWA and the requirements of Sections 1911(b), 1911(c) and 1912(a) must be followed. Simply put, notification to a federally recognized tribe pursuant to the ICWA is not required only when all parents sign a consent to the adoption on the appropriate form (AD 857; 858; 859; 850 or 861).

Nothing in this letter should be interpreted to exempt any agency from submitting an AD 4311 to the Department for the purpose of determining the child's Indian heritage, regardless of whether the tribe in question is federally recognized for purposes of the ICWA. An AD 4311 must be submitted whenever there is an indication that the child is of Indian heritage.

County Welfare Departments should refer all questions regarding CWS and ICWA procedures to the Adult and Family Services Operations Bureau at (916) 445-0623 or ATSS 485-0623. Public and private adoption agencies should refer all questions regarding these revised adoptions planning procedures to the Adoptions Policy Bureau at (916) 322-4228 or ATSS 492-4228.

LORAN D. SUTER  
Deputy Director

Attachment

CC: CWDA

2.  
ALL COUNTY  
LETTER 95-07

DEPARTMENT OF SOCIAL SERVICES  
744 P Street, Sacramento, CA95814



February 9, 1995

REASON FOR THIS TRANSMITTAL

ALL-COUNTY LETTER No. 95-07

- State Law change
- Federal Law or Regulation Change
- Court order or Settlement Agreement
- Clarification Requested by One or More Counties
- Initiated by CDSS

TO: ALL CITY WELFARE DIRECTORS

SUBJECT: AID TO FAMILIES WITH DEPENDENT CHILDREN-FOSTER CARE (AFDC-FC)  
PROGRAM ELIGIBLE FACILITY REQUIREMENTS

REFERENCE: Welfare and Institution Code (WIC) section 11401(e) and Eligibility  
and Assistance Standards (EAS) sections 45-202.5 and 45-203.4

The purpose of this All-County Letter is to inform the counties of a change in policy concerning AFDC-FC eligible facility requirements in the case of Indian children placed in out-of-home care pursuant to the Indian Child Welfare Act (ICWA).

Effective the date of this letter, counties may claim state and federal AFDC-FC on behalf of an eligible Indian child in a foster care placement made pursuant to the ICWA. These placements may include a state licensed or approved facility and any home of a relative or nonrelative located on or off the reservation which is licensed, approved or specified by the Indian child's tribe. The change in policy provides more placement options for Indian children, but does not make changes in any other areas of AFDC-FC program administration.

The change in policy is based on regulatory changes initiated by the California Department of Social Services (CDSS) in EAS sections 45-202.5 and 45-203.4 which provide that federal and state AFDC-FC respectively, may be claimed on behalf of an eligible Indian child placed in a home designated by the child's tribe. The CDSS will submit a Title IV-E State Plan amendment to the federal Department of Health and Human Services (DHSS), Administration for Children and Families, requesting formal approval to claim federal AFDC-FC for these placements. Additionally, the CDSS requested that the DHSS grant preliminary approval for the proposed amendment to the Title IV-E State Plan, and permission to implement the expanded funding options pending formal approval of both the regulatory changes and the State Plan amendment. The CDSS obtained written approval from the DHSS which granted both requests on December 14, 1994.

The policy and regulatory changes are supported by both federal and state statutes (ICWA 25 USC Section 1915 and WIC section 11401[e]). The ICWA was passed by Congress in 1978 to establish minimum federal standards for the removal

of Indian children from their homes. Specifically, the ICWA requires, in the absence of good cause to the contrary, that the preferred placement of an Indian child in foster care be the home of the Indian child's extended family or a foster home licensed, approved or specified by the Indian child's tribe. These ICWA provisions apply to all Indian children in foster care who are unmarried and less than 18 years of age and at a minimum have one parent who is a member of an Indian tribe recognized as *eligible* for the services provided to Indians by the Secretary of the Interior.

The CDSS encourages counties to work with tribes to establish mutually acceptable criteria for determining appropriate homes for the placement of Indian children. Please contact the Foster Care Policy Bureau at (916) 445-0813 if you have any questions regarding the implementation of this letter or any other issue related to AFDC-FC program administration.

Sincerely,

MARJORIE KELLY  
Deputy Director  
Children Services Division

3.  
ALL COUNTY  
INFORMATION  
NOTICE I-46-98

DEPARTMENT OF SOCIAL SERVICES  
744 P Street, Sacramento, CA 95814



August 12, 1998

ALL COUNTY INFORMATION NOTICE NO. I-46-98

TO: ALL COUNTY WELFARE DIRECTORS  
ALL CALIFORNIA INDIAN TRIBES  
ALL PUBLIC AND PRIVATE ADOPTION  
AGENCIES  
ALL CDSS ADOPTION DISTRICT OFFICES

REASON FOR THIS TRANSMITTAL

- State Law Change  
 Federal Law or Regulation Change  
 Court Order or Settlement  
 Clarification Requested by One or  
More Counties  
 Initiated by CDSS

SUBJECT: THE IMPACT ON THE INDIAN CHILD WELFARE ACT OF:  
ASSEMBLY BILL 1544; THE ADOPTION AND SAFE FAMILIES ACT OF 1997; AND THE  
SMALL BUSINESS JOB PROTECTION ACT OF 1996, SECTION 1808 "REMOVAL OF  
BARRIERS TO INTERETHNIC ADOPTION"

REFERENCE: ALL COUNTY INFORMATION NOTICES I-14-96 (dated March 11, 1996),  
I-56-97 (dated September 10, 1997), I-16-98 (dated March 12, 1998)

The purpose of this All County Information Notice (ACIN) is to provide information concerning Assembly Bill (AB) 1544; the Adoption and Safe Families Act of 1997; and the Small Business Job Protection Act of 1996, Section 1808 "Removal of Barriers to Interethnic Adoption, and their interface with the Indian Child Welfare Act (ICWA)." These new federal and state standards do not change the responsibility of states to meet the standards established under ICWA for eligible Indian children under California care and custody, nor does it impact eligible Indian children in the custody of a tribal court in which the tribe has a state/tribal agreement pursuant to AB 1525 (Chapter 725, Statutes of 1995). Eligible Indian children as defined by ICWA are those who are either members of a federally recognized Indian tribe, or those who are eligible for membership in a federally recognized tribe. The standards established under ICWA would still override the provisions in each of these three laws for eligible Indian children.

**Adoption and Safe Families Act of 1997 (Public Law 105-89)**

The Adoption and Safe Families Act of 1997 establishes new federal standards in foster care and permanency planning. The "reasonable efforts" standard has been modified to apply to the development and achievement of permanency planning goals for children, and not just to efforts to reunify. Some of the other provisions of this law include the establishment of new case plan requirements for states, the provision of financial incentives for those states that increase the number of children in foster care that are adopted, the continuation of the Family Preservation and Support Services Program, and the development of new outcomes measures to gauge a state's progress on the protection of children. However, even with the creation of these new federal provisions, standards established under ICWA will still apply for eligible Indian children.

**Assembly Bill (AB) 1544 (Chapter 793, Statutes of 1997)**

Assembly Bill 1544 revises various sections of the Welfare and Institutions Code, Family Code, Health and Safety Code, and Evidence Code as these statutes pertain to the juvenile court dependency and adoption processes. Some of the major areas impacted by AB 1544 include concurrent services planning, the establishment of paternity, the definition of relative caregivers, kinship adoptions, sibling groups, and voluntary relinquishment. The purpose of the law is to achieve the ultimate goal of permanence for children with safe and nurturing families committed to them throughout their lives. As in the case of the Adoption and Safe Families Act of 1997, these statutory changes do not impact the standards established under ICWA for eligible Indian children regardless of whether the child is under California court jurisdiction or under the jurisdiction of a tribal court in which the tribe has entered into a state/tribal agreement pursuant to AB 1525.

**Small Business Job Protection Act of 1996, Section 1808 "Removal of Barriers to Interethnic Adoption" (Public Law 104-188)**

In 1996, the Small Business Job Protection Act of 1996 was signed into law. Section 1808 of the Act is entitled "Removal of Barriers to Interethnic Adoption." The interethnic placement provisions of the Act became effective January 1, 1997, and revised the federal Multi-ethnic Placement Act (MEPA) of 1994 relating to foster care and adoptive placement of children. The provisions were intended to eliminate delays in placement where they were in any way avoidable. Race, culture, or ethnicity may not be used as the basis for any denial of placement, nor may such factors be used as a reason to delay any foster or adoptive placement. However, as in the case of AB 1544 and the Adoption and Safe Families Act of 1997, the changes contained in Public Law 104-188 do not impact foster care placements or the consideration of permanent homes for eligible Indian children established by the provisions of ICWA.

The purpose in enacting all three of these pieces of legislation is to achieve timely legal permanence for children in out-of-home care. State and federal statute now authorize concurrent planning, e.g., working on an alternative permanency plan for children concurrently with efforts to reunify. However, the purpose of the legislation is not intended to override the provisions of ICWA.

If you have additional questions about the impact of AB 1544, Public Law 105-89, and Public Law 104-188 upon ICWA, please contact Teresa Contreras of the Foster Care Policy Bureau at (916) 445-0813, or by e-mail at [tcontrer@dss.ca.gov](mailto:tcontrer@dss.ca.gov).

Sincerely,

*Original Document Signed By  
Marjorie Kelley on August 12, 1998*

MARJORIE KELLY  
Deputy Director  
Children and Family Services Division