

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 660 Department or Agency Human Resources

Rule No. 660-5-36-.04

Rule Title: Out of Home Placement of Indian Children

New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? yes

Is there another, less restrictive method of regulation available that could adequately protect the public? no

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? no

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? no

Are all facets of the rule making process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? yes

Does the proposed rule have an economic impact? no

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of § 41-22-23, ALA. CODE 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, ALA. CODE 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service:

Signature of certifying officer: *Randy D. Buckner*

Date: *January 21, 2014*

DATE FILED
(STAMP)

Department of Human Resources
Social Services

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 660-5-36-.04 Out of Home Placement of Indian Children

INTENDED ACTION: Incorporate federal regulations into Administrative Procedures Code


SUBSTANCE OF PROPOSED ACTION: The *Fostering Connections to Success and Increasing Adoptions Act of 2008* mandated the development of federal procedures for the transfer of placement and care responsibility from a state title IV-E agency (DHR) to an Indian tribe with either a title IV-E agreement or an Indian tribe with an approved IV-E plan. Procedures were released in the Federal Register in January 2010. States were instructed in April 2013 to develop policy and submit an amended IV-E State Plan to include the required procedures. The purpose of the procedures is to assure that an Indian child who is title IV-E eligible continues to receive IV-E benefits and payments after the care of the Indian child is transferred to a tribe.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested parties may submit data, views, or arguments respecting the proposed amendment by mail or in person through the close of business on March 7, 2014. Persons wishing to submit data, views, or arguments orally should contact the Department's Administrative Procedure Secretary between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding State holidays, at (334) 242-9330, or set up an appointment for such oral/in person presentations.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: March 7, 2014

CONTACT PERSON AT AGENCY:

Gail Grobe, APA Secretary
State Department of Human Resources
Gordon Persons Building
50 Ripley Street, Room 2122
Montgomery, Alabama 36130-4000



Nancy T. Buckner, Commissioner
Department of Human Resources

**ALABAMA DEPARTMENT OF HUMAN RESOURCES
SOCIAL SERVICES DIVISION
ADMINISTRATIVE CODE**

**CHAPTER 660-5-36
INDIAN CHILD WELFARE ACT (ICWA)**

TABLE OF CONTENTS

660-5-36-.01	Purpose and Applicability
660-5-36-.02	Working with Indian Children and Their Families
660-5-36-.03	Jurisdiction of Tribal Court and State Courts
660-5-36-.04	Out-Of-Home Placement of Indian Children
660-5-36-.05	ICWA and the Interstate Compact for the Placement of Children
660-5-36-.06	Confidentiality and Access of Information on ICWA Cases
660-5-36-.07	Definition of Terms
660-5-36-.01	Purpose and Applicability

660-5-36-.04 Out-Of-Home Placement of Indian Children

(1) ICWA Placement Requirements: When an Indian child or Alaskan Native child is removed from his/her home ICWA requires that the child be placed with extended family members, other tribal members, or other Indian families. When this is not possible, the Indian child must be placed in a foster home approved or specified by the Indian child's tribe; an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or a children's institution approved by the tribe or one that is tribally operated.

(2) Deviation from Placement Preferences:

(a) U. S. C. A. Title 25, Chapter 21 §1915 (c) provides for tribal resolution for different order of preference, personal preference considered; and anonymity in application of preferences. If the Indian child's tribe establishes a different Supp. 3/31/08 5-36-4 order of preference by resolution, the Department shall follow such order as long as the placement is the least restrictive and appropriate to the particular needs of the child.

(b) Guidelines for State Courts developed by the Bureau of Indian Affairs provide considerations for not following the order of preference.

- (i) The request of the biological parents or the child when the child is of sufficient age;
- (ii) The extraordinary physical or emotional needs of the child as established by testimony of a qualified expert witness; or

(iii) The unavailability of suitable families for placement after a diligent search has been completed for families meeting the preference criteria.

(3) ICWA Placement Categories: There are two placement categories for Indian children needing out-of-home placement.

(a) Foster Care/Pre-adoptive Placement includes a member of the child's extended family; a foster home licensed, approved or specified by the child's tribe; an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or an institution for children approved by an Indian tribe or operated by an Indian tribe.

(b) Adoptive placements include a member of the child's extended family; other members of the Indian child's tribe; or other Indian families.

(4) Consent for Voluntary Placement of Indian Children: Indian parents or custodians may consent to voluntarily place an Indian child in foster care.

(a) Such consent is valid only if executed in writing and occurring at least ten days after the birth of the Indian child.

(b) The written consent must be recorded before a judge of a court of competent jurisdiction, accompanied by that judge's certificate that the terms and consequences of the consent were fully explained and fully understood by the parent or Indian custodian and interpreted into a language that the parent or Indian custodian understood.

(5) Withdrawal of Voluntary Consent for Foster Care: Any Indian parent or Indian custodian may withdraw the consent for foster care placement under State law at any time and upon such withdrawal, the child shall be returned to the parent/Indian custodian.

(6) Involuntary Foster Care and Adoptive Placement: When an Indian child is being placed into foster care or termination of parental rights is being considered, clear and convincing evidence and in the case of termination of parental rights beyond reasonable doubt, and expert witness testimony must be presented to the court that the Indian child is likely to experience serious emotional or physical harm if custody remains with the parent or Indian custodian. No order for foster care placement, excluding emergency removals, or termination of parental rights may be entered without the clear and convincing evidence, and in the case of termination of parental rights beyond reasonable doubt and qualified expert witness testimony that continued custody by the Indian parent or custodian will likely result in the serious emotional or physical harm to the child.

(7) Required Notifications for Involuntary Foster Care/Adoptive Placements: In cases of involuntary placement of an Indian child in foster care or termination of parental rights of an Indian parent/custodian, the Department must notify the child's parents or Indian custodian

and the Indian tribe of pending legal proceedings. Notification is by registered mail with return receipt requested. Except for emergency removals, no foster care placement or termination of parental rights proceedings may occur until at least ten days after notice has been received by the parents/custodian and tribe.

(8) Information Required At Time of Transfer of Placement and Care Responsibility of an Indian child to a Tribal Title IV-E Agency or a Tribe with a IV-E Agreement: Placement and care responsibility means that the title IV-E agency or a tribe with a IV-E agreement is legally accountable for the day-to-day care and protection of the child who has come into out of home care through either a court order or a voluntary placement agreement. Placement and care responsibility allows the title IV-E agency to make placement decisions about the child, such as where the child is placed and the type of placement most appropriate for the child. Certain information is required to be provided to a tribe when there is a transfer of placement and care responsibility of an Indian child from the Department to an Indian tribe approved as a title IV-E agency or a tribe with a IV-E agreement with the state title IV-E agency in which the tribe is located.

(a) The child's title IV-E eligibility status must be determined prior to transfer and provided to the Tribal IV-E agency or an Indian tribe with a IV-E agreement.

(b) Essential documents and information necessary to continue a child's eligibility for IV-E and Medicaid must be provided to the Tribal IV-E agency or an Indian tribe with a IV-E agreement. This includes, but is not limited to the following:

(i) All judicial determinations to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts as required by Department policies have been made;

(ii) Any permanency hearing orders required to establish on-going title IV-E eligibility;

(iii) Other documentation the Department may have that relates to the child's title IV-E eligibility for foster care maintenance payments or adoption subsidy payments;

(iv) Information and documentation available to the Department regarding the child's eligibility or potential eligibility for other Federal benefits.

(v) The child's Individualized Service Plan (ISP) maintained by the Department which includes the health and educational records that are required elements of the ISP;

(vi) Information and documentation of the child's placement settings, including a copy of the most recent provider's license or approval.

(c) County departments need to be relieved of legal custody of the Indian child in the transfer process.

(d) Medicaid for a title IV-E eligible Indian child continues as long as the child receives title IV-E foster care or title IV-E adoption assistance payments. The Indian child is eligible for Medicaid in the State where the child actually resides.

Author: Margaret Livingston

Statutory Authority: 25 United States Code, Chapter 21 §1901 – 1923; 45 Code of Federal Regulations § 1356.67.

History: New Rule: Filed December 20, 2007; Effective January 24, 2008. Emergency Rule Filed December 18, 2013; Final Comment Date March 7, 2014; Permanent Amended Rule filed February 5, 2014; Permanent Amended Rule: Effective April 13, 2014.