

	GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES CHILD WELFARE POLICY MANUAL			
	Chapter:	(1) Administration	Effective Date:	December 2021
	Policy Title:	Indian Child Welfare Act (ICWA) and Transfer of Responsibility for Placement and Care to a Tribal Agency		
	Policy Number:	1.6	Previous Policy #:	N/A

CODES/REFERENCES

- O.C.G.A. §15-11-100.1
- O.C.G.A. §15-11-260.1
- O.C.G.A. §19-9-43 Proceeding Pertaining to Indian Child Exempted from Article
- O.C.G.A. §44-12-300 Tribes, Bands, Groups, or Communities Recognized by State as Legitimate American Indian Tribes
- O.C.G.A. §49-5-41 Persons and Agencies Permitted Access to Records
- Indian Child Welfare Act of 1978 Final Rule (25 CFR Part 23)
- Title IV-E of the Social Security Act (Section 45 CFR 1356.67)

REQUIREMENTS

Indian Child Welfare Act

The Division of Family and Children Services (DFCS) shall:

1. Comply with all rules, regulations and provisions of the Indian Child Welfare Act (ICWA).
NOTE: ICWA applies to children residing in Georgia who are members or eligible for membership and has a biological parent who is an enrolled member in a federally recognized Indian tribe.
2. Ensure that any child who is a member of a federally recognized Indian Tribe, or eligible for membership and has a biological parent who is an enrolled member, and is subject to removal, placement and/or any other legal action involving DFCS, is afforded all rights under the ICWA to promote the stability and security of Indian Tribes and their families.
3. Prevent the unnecessary and arbitrary removal of Indian children from their families and Tribes, placing an Indian child who must be removed in an available and safe foster and adoptive home that reflects the unique values of American Indian culture, and adhering to the placement requirements of ICWA.
4. Make every effort to determine if a child is a member or eligible for membership in an Indian Tribe, beginning at intake and continuing throughout DFCS' involvement with the child and family.
NOTE: DFCS must comply with ICWA from the earliest stages of a child welfare case.
5. Provide notification by registered or certified mail, return receipt requested, whenever there is a pending involuntary proceeding about placement or termination of parental rights involving a child who is or is believed to be a member or eligible for membership in an Indian Tribe, to:
 - a. The Indian child's parents, Indian custodian, and the Indian child's Tribe.

- b. The United States Secretary of Interior, Bureau of Indian Affairs if the identity or location of the parent, Indian custodian, and the Tribe cannot be determined.
- 6. Adhere to the ICWA guidelines for placement of an Indian child:
 - a. Ensure that active efforts are made prior to removing the Indian child from his or her parents or Indian custodian, ordering an involuntary foster care placement, termination of parental rights, and during an out-of-home placement, to promote reunification.
 - b. Make a foster care placement only if there is a determination, supported by clear and convincing evidence that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
 - c. Place the child in the following placement preference order for a foster care placement:
 - i. A member of the child's extended family;
 - ii. Another member of his or her Tribe or another Indian family, if a suitable extended family member is not available;
 - iii. A foster home licensed, approved, or specified by the Indian child's Tribe;
 - iv. An Indian foster home licensed and/or approved by an authorized non-Indian licensing authority; or
 - v. An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.
 - d. Place the child in the following placement preference order for an adoptive placement:
 - i. A member of the child's extended family;
 - ii. Other members of the Indian child's Tribe;
 - iii. Other Indian families.

NOTE: Refer to policy [10.1 Foster Care: Placement of a Child](#) for additional guidance.

- 7. Adhere to pre-trial requirements:
 - a. Inform the courts in an emergency, voluntary, or involuntary child custody proceeding whether DFCS knows or has reason to know that the child is an Indian child.
 - b. Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an "Indian child", if there is reason to know, but DFCS does not have sufficient evidence to determine that the child is or is not an "Indian child".
 - c. Confirm that DFCS exercised due diligence to identify and work with all Tribes of which there is reason to know the child may be a member or eligible for membership, and to verify whether the child is in fact a member or is eligible for membership.
- 8. Transfer jurisdiction of any state court proceeding to the Tribe when the proceeding involves the removal or termination of parental rights of an Indian child not residing within a reservation.

NOTE: An Indian Tribe has exclusive jurisdiction over any custody proceeding involving an Indian child who resides within the reservation of such Tribe. Although the tribal court may decline jurisdiction, they are still entitled to participate.

- 9. Obtain voluntary consents for foster care (voluntary placement agreement) or relinquishments (voluntary surrender) in writing.

NOTE: A consent given prior to, or within 10 days after, the birth of an Indian child is not valid.

- a. Consent must be brought to a court of competent jurisdiction and certified by the judge or the court. Prior to accepting the consent, the court must explain to the parent or Indian custodian:
 - i. The terms and consequences of the consent in detail; and
 - ii. The limitations on withdrawal of consent.
- b. The court must certify that the terms and consequences of the consent were explained on the record in detail in English (or the language of the parent or Indian custodian if English is not the primary language) and were fully understood by the parent or Indian custodian.

NOTE: The consent is not valid until it is recorded before the court and certified by the judge or the court.

- c. The voluntary consent for foster care placement may be withdrawn by the child's parents' or Indian custodian for any reason at any time and have the child returned;
 - d. The consent for termination of parental rights may be withdrawn at any time and for any reason prior to the entry of the final decree of termination and have the child returned;
 - e. The consent for an adoptive placement by the parent or Indian custodian may be withdrawn at any time for any reason prior to the entry of the final decree of adoption, and have the child returned;
 - f. Return the child as soon as is practicable, upon the child's parents' or Indian custodian's written request to terminate the VPA or voluntary surrender.
10. Allow all who are party to an emergency, foster care, or termination of parental rights proceeding, time to examine all reports and other documents filed with the court.
 11. Document in detail all findings and outcomes of a case involving an Indian child to ensure that the ICWA standards are being met.
 12. Maintain a record of every voluntary or involuntary placement of an Indian child and make the record available within fourteen (14) days of a request by an Indian child's Tribe or the Secretary of the Interior.
 13. Engage non-federally recognized Georgia Tribes with the consent of the tribal families whenever DFCS becomes involved with a child who is a member of a Georgia Tribe:
 - a. Inform the courts during each proceeding whether DFCS knows or has reason to know that the child is a member of a Georgia Tribe.
 - b. Partner with the family to involve the Georgia Tribe as a formal or informal support for participation in case planning and decision-making.
 - c. Prioritize out-of-home placements within the tribal community.

Transfer of Responsibility for Placement and Care to a Tribal Agency

DFCS shall establish and maintain procedures for the transfer of responsibility for the placement and care of a child under a State title IV-E plan to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement. At a minimum, DFCS' transfer procedures:

1. *Are established and maintained in consultation with Indian Tribes;*
2. *Do not affect a child's eligibility, receipt of services, or payment under title IV-E or the medical assistance program operated under title XIX;*

3. *Establish eligibility for title IV-E at the time of transfer, if an eligibility determination is not already completed; and*
4. *Provide for essential documents and information necessary to continue a child's eligibility under title IV-E and Medicaid programs under title XIX to the Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement, including but not limited to the following:*
 - a. *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 described in section 471(a)(15) of the Act have been made;*
 - b. *Other documentation the State agency has that relates to the child's title IV-E eligibility under sections 472 and 473 of the Act;*
 - c. *Information and documentation available to the agency regarding the child's eligibility or potential eligibility for other Federal benefits;*
 - d. *The case plan developed pursuant to section 475(1) of the Act, including health and education records of the child pursuant to section 475(1)(C) of the Act; and*
 - e. *Information and documentation of the child's placement settings, including a copy of the most recent provider's license or approval.*

PROCEDURES

Indian Child Welfare Act

The Social Services Case Manager (SSCM) will:

1. Engage the child (if age appropriate) and family:
 - a. During the initial contact to determine if the child and/or family are of Indian heritage or if the child may be eligible for membership in a federally recognized Indian Tribe.
 - b. Each time the case is transferred from one worker or program to another, the receiving SSCM must confirm that verification of Indian heritage and tribal membership has previously been completed.
2. Identify and obtain contact information for the Tribe, if the parent or child states that they are of Indian heritage, or if it is determined that the parent, guardian, or Indian custodian is a member of an Indian Tribe, or if the child may be eligible for tribal membership. Refer to www.bia.gov or www.nrc4tribes.org/state.cfm for assistance in locating Tribe information.
3. Document Indian heritage and tribal membership on the Person Detail in Georgia SHINES.
4. Immediately notify the Indian Tribe by email and/or telephone when there is a pending proceeding in Georgia involving the placement of an Indian child. Notify them that the Indian child is being or has been removed.
5. Complete the applicable ICWA Notification Letter (see Forms and Tools) and send it registered or certified mail with return receipt requested to the following:
 - a. The child's parents, guardian (or Indian custodian), and the Tribe with copies of the petition.
 - b. The United States Secretary of Interior, Bureau of Indian Affairs if the identity or location of the parent or Indian custodian and the Tribe cannot be determined. The Secretary has 15 days after receipt of the notification to provide the requisite notice to the parent or Indian custodian and the Tribe.

United States Department of Interior
Bureau of Indian Affairs (BIA), Eastern Regional Office
545 Marriott Drive, Suite 700
Nashville, TN 37214

NOTE: Notice may be sent via personal service or electronically, but such alternative methods do not replace the requirement for notice to be sent by registered or certified mail, return receipt requested.

6. Inform the courts during each proceeding whether DFCS knows or has reason to know that the child is an Indian child.
7. Treat the child as an Indian child if there is reason to know that the child is an Indian child, unless and until it is determined on the record that the child does not meet the ICWA definition of an "Indian child".
8. Make "active efforts" prior to removing the Indian child from his or her parents or Indian custodian (see Practice Guidance for examples of active efforts).
 - a. When seeking foster care placement or termination of parental rights, the court must be satisfied that active efforts have been made to prevent the breakup of the Indian family, and that these efforts have been unsuccessful.
 - b. Active efforts must also be made during an out-of-home placement to promote reunification.
 - c. Active efforts must be documented in detail in the case record.

NOTE: Active efforts are also applicable to VPAs and voluntary surrenders.

9. Make a foster care placement only if there is a determination supported by clear and convincing evidence that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
 - a. A foster care placement proceeding cannot be held until at least ten days after receipt of notice by the parent (or Indian custodian) and the Tribe (or the U.S. Secretary of Interior).
 - b. The parent, Indian custodian, the Tribe and the Secretary can, upon request, be granted up to 20 additional days to prepare for the proceeding.
 - c. Testimony of one or more qualified expert witnesses must be included in the proceeding.
10. Place the Indian child in the following placement preference order:
 - a. A member of the child's extended family;
 - b. Another member of his or her Tribe or another Indian family if a suitable extended family member is not available;
 - c. A foster home licensed, approved, or specified by the Indian child's Tribe;
 - d. An Indian foster home licensed and/or approved by an authorized non-Indian licensing authority; or
 - e. An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

NOTE: Preference options must be strictly followed. Placement of an Indian child into a non-Indian home is the last option or alternative after all other options have been exhausted.

11. In any adoptive placement, give preference in the following order:
 - a. A member of the child's extended family
 - b. Other members of the Indian child's Tribe

c. Other Indian families

NOTE: Preference options must be strictly followed. Placement of an Indian child into a non-Indian home is the last option or alternative after all other options have been exhausted.

12. Terminate any emergency removal or placement of an Indian child immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.
13. In a termination of parental rights (TPR) proceeding, evidence beyond a reasonable doubt must be presented, including testimony of qualified expert witnesses that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
NOTE: A TPR proceeding cannot be held until at least ten days after receipt of notice by the parent (or Indian custodian) and the Tribe (or the U.S. Secretary of Interior).
14. Obtain voluntary consents for foster care (VPA) or relinquishments (voluntary surrender) in writing and have them recorded before a court of competent jurisdiction and certified by the judge or the court.
 - a. Request the Special Assistant Attorney General (SAAG) petition the court to record the consent before the court and obtain the judge/court certification.
 - b. Provide a copy of the completed Voluntary Placement Agreement to Place a Child in Foster Care (Authorization) form to the SAAG for submission to the court with the petition.
 - c. Participate in the proceeding to certify the consent.
 - d. Obtain a copy of the judge/court certification and upload to Georgia SHINES External Documentation:
 - i. The completion and signature of the judge or court official on the VPA form; or
 - ii. Other documentation of the certification provided by the court signed by the judge or other designated court official.
 - e. Upon written request from the parent or Indian custodian to terminate the VPA or voluntary surrender return the child as soon as is practicable.
 - f. Provide a copy of the signed termination request to the court via the SAAG.

(For more detailed information on VPA and voluntary surrender refer to policies [20.6 Special Circumstances: Voluntary Placement Agreement](#); [10.2 Foster Care: Placement of a Child via a Voluntary Placement Agreement \(VPA\)](#); and [20.7 Special Circumstances: Voluntary Surrender](#); [17.12 Legal: Voluntary Surrender of Parental Rights](#)).
15. Allow each party to an emergency, foster care, or termination of parental rights proceeding, to timely examine all reports and other documents filed with the court.
16. Maintain a record of every placement of an Indian child and make the record available within 14 days of a request by an Indian child's Tribe or the Secretary.
17. Document all activities, findings, and outcomes in Georgia SHINES within 72 hours of occurrence to ensure that the ICWA standards are being met. The following are required to be documented in the case record:
 - a. Whether the court found that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child;
 - b. Whether the evidence presented for foster care placement or TPR included the testimony of one or more qualified expert witnesses (QEW);

- c. All of the active efforts that were made to prevent removal prior to the child entering out-of-home care, as well as active efforts made to promote reunification throughout the child's stay in out-of-home care;
- d. Whether prior to foster care placement or TPR, the court concluded that active efforts were made to prevent the breakup of the Indian family and that those efforts were unsuccessful;
- e. Whether the court determined, on the record or in writing, a good cause to depart from ICWA placement preferences; and
- f. Whether the foster parent(s) is a member of an Indian Tribe, and the name of the Tribe.

Georgia Tribes

The SSCM shall:

- 1. Engage the child (if age appropriate) and family, during the initial contact, to determine if the child and/or family are members (or eligible for membership) of a Georgia Tribe.
 - a. Identify the Tribe and obtain the contact information for the Tribe.
 - b. Document Indian heritage and tribal membership in Georgia SHINES on the Person Detail page.
- 2. Inform the courts during each proceeding whether DFCS knows or has reason to know that the child is a member of a Georgia Tribe. The court may allow the child's Tribe to participate in the child custody proceeding upon request of the Tribe.
- 3. Work with the family to involve the Tribe as a formal or informal support for participation in case planning and decision-making.
- 4. Consider the child's family and community connections to the Tribe when selecting a placement resource or provision of services. Refer to policy [10.4 Foster Care: Selecting a Placement Resource](#) for additional guidance.

Transfer of Responsibility for Placement and Care to a Tribal Agency

When transferring responsibility for the placement and care of a child under a state title IV-E plan to a tribal title IV-E agency or an Indian Tribe with a title IV-E agreement, the SSCM will:

- 1. Complete the referral to Rev Max to determine child funding eligibility (see policy [9.3 Eligibility: Applying for Initial Funding](#)).

NOTE: An eligibility determination must be made prior to transfer.
- 2. Contact the tribal agency within seven business days of determining the child is a member of the Tribe to discuss possible transfer of responsibility of placement of the child.
- 3. Establish the date and time of physical transfer of the child upon determination by the Division and tribal agency of the Tribe's ability to assume responsibility for placement of the child.
- 4. Provide the tribal agency with the documents and information necessary to continue a child's eligibility under title IV-E and Medicaid within ten business days of initial contact:
 - a. 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 have been made;
 - b. Other documentation the state agency has that relates to the child's title IV-E eligibility;

- c. Information and documentation available to the agency regarding the child's eligibility or potential eligibility for other federal benefits;
- d. The case plan, including health and education records of the child; and
- e. Information and documentation of the child's placement settings, including a copy of the foster home or group home's license or approval.

The Social Service Supervisor (SSS) will:

- 1. Ensure the SSCM has determined if the child is of Indian heritage, or if the child is a member or eligible for membership in a federally recognized Indian Tribe.
- 2. Ensure the SSCM provides appropriate and timely notifications to the child's parents, guardian (or Indian custodian), and the Tribe, or to the BIA, if the Tribe cannot be located.
- 3. Be accessible to the SSCM to provide guidance and consultation regarding:
 - a. Active efforts;
 - b. Placement preferences;
 - c. Informing the court if DFCS has a reason to know the child is an Indian child;
 - d. Documentation of ICWA-related activities;
 - e. Engaging families of Georgia Tribes; and
 - f. Transferring responsibility for the placement and care of a child to a tribal title IV-E agency or an Indian Tribe with a title IV-E agreement.

PRACTICE GUIDANCE

Indian Child Welfare Act (ICWA)

The Indian Child Welfare Act of 1978 was enacted by Congress to address the alarming rate of removals of American Indian children from their homes for foster care and adoptive placements. ICWA established standards, as well as a protocol, for providing child welfare services to assure that agencies meet the cultural needs of Indian children requiring out-of-home placement and to protect the continued existence and integrity of Indian Tribes. ICWA seeks to protect the rights of the Indian child as an Indian and the rights of the Indian community and Tribe in retaining its children in its society. It gives the Indian child's parents or Indian custodian and their Tribe the right to intervene or request transfer to their tribal court of any proceedings involving out-of-home placement or termination of parental rights of an Indian child.

If the child is a member of, or eligible for membership in, a federally recognized Indian Tribe, the family, the Indian custodian, and the Tribe have rights under ICWA. These rights apply to any child protection case, adoption, guardianship, termination of parental rights action, runaway, or truancy matter involving the placement of an Indian child (including foster care placements, termination of parental rights, pre-adoptive placements, adoptive placements, both voluntary and involuntary placements, transfers of placement and placements due to failed adoptions.)

- 1. "Foster care placement" means any action removing an Indian child from the parent or Indian custodian for temporary placement in a foster home or institution or in 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;

2. "Termination of parental rights" means any action that may result in the termination of the parent-child relationship;
3. "Pre-adoptive placement" means 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 an adoptive placement; and
4. "Adoptive placement" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Locating Information on Federally Recognized Tribes

As of February 2020, there are **574** federally recognized Indian Tribes. No federally recognized Tribes are located in Georgia. Tribes are continually applying for federal recognition, so the number of approved tribes may increase over time. It is important for staff to exercise due diligence in researching tribes, as their recognition status may have changed. The federal Bureau of Indian Affairs (www.bia.gov) provides information on federally recognized tribes and their contact information. Visit the BIA website and search the Quick Links for resources related to the ICWA, and the Complete List of Federally Recognized Tribes.

Children Belonging to a Federally Recognized Tribe

If a child residing in Georgia belongs to one of the federally recognized Tribes, it is important to comply with ICWA from the earliest stages of a child welfare proceeding. The SSCM must address the following requirements in ICWA:

1. Notification to child's parents, guardian (or Indian custodian), and the Tribe regarding State proceedings involving the child and their right to intervene;
2. Notification to the Court that the child may belong to a federally recognized Tribe;
3. Special placement preferences for Indian children;
4. Active efforts to prevent the breakup of the Indian family; and
5. Use of tribal courts in child welfare matters (the Tribe has a right to intervene in State proceedings or transfer the proceeding to the jurisdiction of the Tribe).

Emergency Removal of a Child

Nothing in the ICWA shall be construed to prevent the emergency removal of an Indian child to prevent imminent physical damage or harm to the child. The emergency removal or placement shall terminate immediately when it is no longer necessary to prevent imminent physical damage or harm to the child and cannot last more than 30 days unless the court makes certain determinations. The SSCM must proceed expeditiously with child custody proceedings, transfer the child to the jurisdiction of the appropriate Indian Tribe, or return the child to the parent(s) or Indian custodian, as appropriate.

Indian

"Indian" is a term used in United States federal language, including the Indian Child Welfare Act, to refer to any person who is a member of a federally recognized American Indian Tribe or Alaska Native Village, or who is an Alaska Native and a member of a Regional Corporation.

Indian Child

Any unmarried person who is under age 18 and is determined by the Tribe, Bureau of Indian Affairs, or Department of the Interior, to be:

1. A member or eligible for membership of an Indian Tribe as determined by the Tribe and/or Nation, the Bureau of Indian Affairs (BIA), or the Department of the Interior; or
2. Eligible for membership in an Indian Tribe as determined by the Tribe and the biological child of a member of an Indian Tribe.

Indian Custodian

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, and control has been transferred by the parent of such child. An Indian may demonstrate that he or she is an Indian custodian by looking to Tribal law, Tribal custom or State law.

Tribal Membership

What constitutes membership in a Tribe varies from Tribe to Tribe, and final determination of membership lies solely with the Tribe. Tribal membership is not an arbitrary label assigned at the discretion of the parent. If an Indian child who is a member or eligible for membership in more than one Tribe, the Indian Tribe with which the Indian child has the more significant contacts and connection shall be the child's Tribe.

Evidentiary Standards

Clear and convincing evidence: To prove a foster care placement is necessary for an Indian child, the SSCM must show enough convincing evidence that the judge believes it to be true.

Beyond a reasonable doubt: To prove a termination of parental rights is necessary for an Indian child, the SSCM must show enough evidence that leaves the judge with no reasonable doubt of the damage to the child. This is the highest level of proof required under the law.

ICWA Protection for Parents and Indian Custodians

ICWA also provides several protections for parents or Indian custodians of an Indian child. These protections include the right to revoke voluntary consents to placements and to adoptions at any time prior to a decree of termination or adoption. Any consent given prior to, or within ten days after the birth of the Indian child shall not be valid. If consent is withdrawn, the Indian child shall be immediately returned to the parent or Indian custodian. After a Decree of Adoption is entered based on a voluntary consent, the parent may petition the court to vacate the adoption decree based on fraud or duress. Upon a finding that consent was obtained through fraud or duress, the court shall vacate the adoption decree and return the child to the parent. However, no adoption decree in effect for at least two years may be challenged on this basis.

If an adoption decree is ever vacated or set aside, or the adoptive parents voluntarily consent to termination of their parental rights, the Indian child shall be returned to the biological parent or prior Indian custodian absent a showing that return is not in the best interests of the child.

Active Efforts

ICWA requires that states provide active efforts to:

1. Provide remedial and rehabilitative services after an investigation and before a decision is made to place the child out of the home, and
2. Provide reunification services after the child has been removed in order to prevent the breakup of the family.

Active efforts are more intensive than reasonable efforts. For example, reasonable efforts

might be only a referral for services, but active efforts would be to arrange for the best-fitting services and help families engage in those services. ICWA's active efforts standard requires caseworkers to walk the parent or Indian custodian through each step of the case plan, and to assist them in accessing the services and meeting the obligations under the plan. These efforts may include, but should not be limited to: assisting the parent or Indian custodian in their efforts to access food, medical treatment, safe housing, parenting classes, emergency phone service, substance abuse treatment, transportation to/from services, day care, or whatever other services will assist the parent in retaining custody of the child. There must be a reasonable connection between the service offered and the issue that caused the child's removal in the first place. In other words, the active efforts must be clearly designed to facilitate reunification of the child and the family.

Placement of Indian Children

The Interstate Compact on the Placement of Children (ICPC) applies to interstate placements under ICWA when the intent is to have the receiving state supervise the placement. However, Tribes are not part of the ICPC and thus if a child is to be placed into tribal custody, the ICPC would not come into play. If an Indian child is transferred to a tribal jurisdiction in another state, the ICPC may apply. The ICPC is not required for a child to be transferred across state lines into tribal jurisdiction. However, if the Tribe would like the sending state (Georgia) to continue making payments to the foster family located within tribal jurisdiction, the Tribe may contact the state within which it is located and request them to utilize the ICPC for the transfer. DFCS would then work with the state of the receiving Tribe to continue making payments.

Qualified Expert Witness

Under ICWA, a "qualified expert witness" is someone who can provide the court with knowledge of the social and cultural standards of the Indian child's Tribe to diminish the risk of any cultural bias. The testimony of a qualified expert witness is required in order to make a foster care placement or termination of parental rights for an Indian child. A qualified expert witness can be identified with help from the child's Tribe, the BIA, or Indian organizations, and is meant to be a person with more knowledge than the average social worker or anthropologist. The social worker assigned to the Indian child may not serve as a qualified expert witness in child custody proceedings concerning the child.

Georgia Tribes

Pursuant to O.C.G.A. §44-12-300, the State of Georgia officially recognizes as legitimate American Indian Tribes of Georgia the following tribes, bands, groups, or communities:

Georgia Tribe of Eastern Cherokee
P.O. Box 1993
Dahlonega, Georgia 30533

Lower Muscogee Creek Tribe
106 Tall Pine Drive
Whigham GA 39897

Cherokee of Georgia Tribal Council
110 Cherokee Way

If a child is a member of a Georgia Tribe, he or she must have the opportunity to maintain connections with their Indian heritage as well. The SSCM can conduct placements consistent with ICWA placement preferences even though not technically required. Tribal members would likely meet requirements as nonrelated extended family members because tribal communities tend to be related or close-knit communities. Consider the child's tribal members as viable options for holiday visits, tutors, mentors, Court Appointed Special Advocates, etc.

If the child's Tribe is seeking federal recognition and is granted such recognition, formal ICWA case services, such as active efforts to prevent the breakup of the Indian family and placement preferences, will then be required. If ICWA active efforts are attempted before the federal recognition, it is less disruptive for the child than having to change services and placement to make them in accordance with ICWA.

Pursuant to O.C.G.A. §19-9-43, the court may allow the child's Tribe to participate in the child custody proceeding upon request of the Tribe. If the court permits the Tribe to participate in the child custody proceeding, the Tribe may do the following with the permission of the court: be present at the hearing; address the court; request and receive notice of hearings; request to examine court documents relating to the proceeding; present information to the court that is relevant to the proceeding; submit written reports and recommendations to the court; and perform other duties as requested or approved by the court.

FORMS AND TOOLS

[Bureau of Indian Affairs](#)

[Capacity Building Center for Tribes](#)

[Georgia Council on American Indian Concerns](#)

[Indian Child Welfare Act Notification to Secretary of the Interior](#)

[Indian Child Welfare Act Notification to Tribe Leader](#)