

Indian Child Welfare Act (ICWA) Case Management Guide

Division of Children and Family Services
CFS Learning and Development
New Worker Training

December 2024

Table of Contents

ICWA Overview.....	pg. 3
ICWA Inquiry.....	pg. 4
ICWA Notice.....	pg. 5
Defining Know vs. Reason to Know.....	pg. 6
Identifying Indian Children Flowchart.....	pg. 7
Active Efforts.....	pg. 8
Placement Guidelines.....	pg. 10
Tribe’s ICWA Specialist.....	pg. 12
Tribe’s Response to Notice.....	pg. 13
Tribal Involvement.....	pg. 14
Qualified Expert Witness (QEW).....	pg. 16
Relinquishments.....	pg. 17
Resources.....	pg. 18
ICWA Case Management Tools.....	pg. 19

ICWA Overview

THE LAW

The federal **Indian Child Welfare Act (ICWA)** was enacted in 1978. In 1985, Nebraska codified the federal ICWA and in 2015, the Nebraska legislature clarified many ICWA provisions. The law aims to **protect Indian children in state child welfare systems and help them remain connected to their families, cultures, and communities.**

Compliance is mandatory. We apply ICWA once we know, or have reason to know, we are working with an Indian Child.

Federal Law (1978)

U.S. Code, Title 25,
Chapter 2
§§1901, *et seq.*

Neb. Rev. Stat.

§43-1501 *et seq.*

Code of Federal Regulations
25 C.F.R. 23
(2016)

ANYTIME DHHS BECOMES INVOLVED WITH A CHILD WHO IS:

Abused,
Neglected,
Dependent,
or Status
Offender

APPLY ICWA

A **member** of an
Indian tribe OR
eligible for
membership
AND the
biological child of
a member of an
Indian tribe.

ICWA Inquiry

§43-279.01; §43-1514

WHEN TO ASK ABOUT MEMBERSHIP?

The court and DHHS must inquire about ICWA eligibility at certain intervals to ensure ICWA compliance.

This includes:

- Both court* and non-court cases
- Throughout the case; intake, initial assessment, ongoing
- Whenever a relative or parent is identified

*Judge *required* to inquire at first court hearing.

HOW TO ASK ABOUT MEMBERSHIP

EXPLAIN that if the child is a member or eligible for membership in a tribe, there could be **additional rights, protections, and services.**

ASK if the child or biological parent is:

- A member in a tribe
- Eligible for membership in a tribe
- Lives on a reservation
- Has been a ward of tribal court

Many Native Americans may be reluctant to disclose their heritage because of historical trauma.

ASK if the child or any relative of the child has or may have:

- Tribal affiliation or Native American Ancestry
- Received health services from an Indian Health Center
- Received benefits/assistance from an Indian organization
- Lived on or near a reservation
- Attended a powwow, gourd dance, or other Native American event or ceremony
- Spoken a Native American language
- Attended a boarding school

ICWA Notice

§43-1505; § 43-1505.01; §43-1506

In both non-court and court-involved cases, the tribe(s), parents, and the Indian Custodian must receive notice if the CFSS *Knows* or has *Reason to Know* that an Indian Child is involved. This notice must include necessary family information for the tribe to make a determination regarding ICWA eligibility and the next court date, if applicable.

Non-Court Case

WHO TO NOTIFY

Tribe, Parents, Indian Custodian

HOW TO NOTIFY

Letter on N-FOCUS
(Send registered mail, return receipt requested) OR
Telephone / Fax / Email

WHEN TO NOTIFY

Within **5 calendar days** of
DHHS offering services

Court Case

WHO TO NOTIFY

Tribe, Parents, Indian Custodian

HOW TO NOTIFY

Letter on N-FOCUS
(Send registered mail, return receipt requested)
AND Telephone / Fax / Email

WHEN TO NOTIFY

As soon as there is a **reason to know** ICWA applies.

Indian Custodian

Any Indian person who has legal custody of an Indian child under tribal law, custom or state law, or to whom the temporary physical care, custody, and control has been transferred by the parent of such child.

Know vs. Reason to Know

KNOW

**If a CFSS
“Knows” they
are working
with an Indian
Child, they can
mark “Yes” to
Tribal Affiliation
in N-FOCUS.**

The CFSS will Know the child is an Indian Child if:

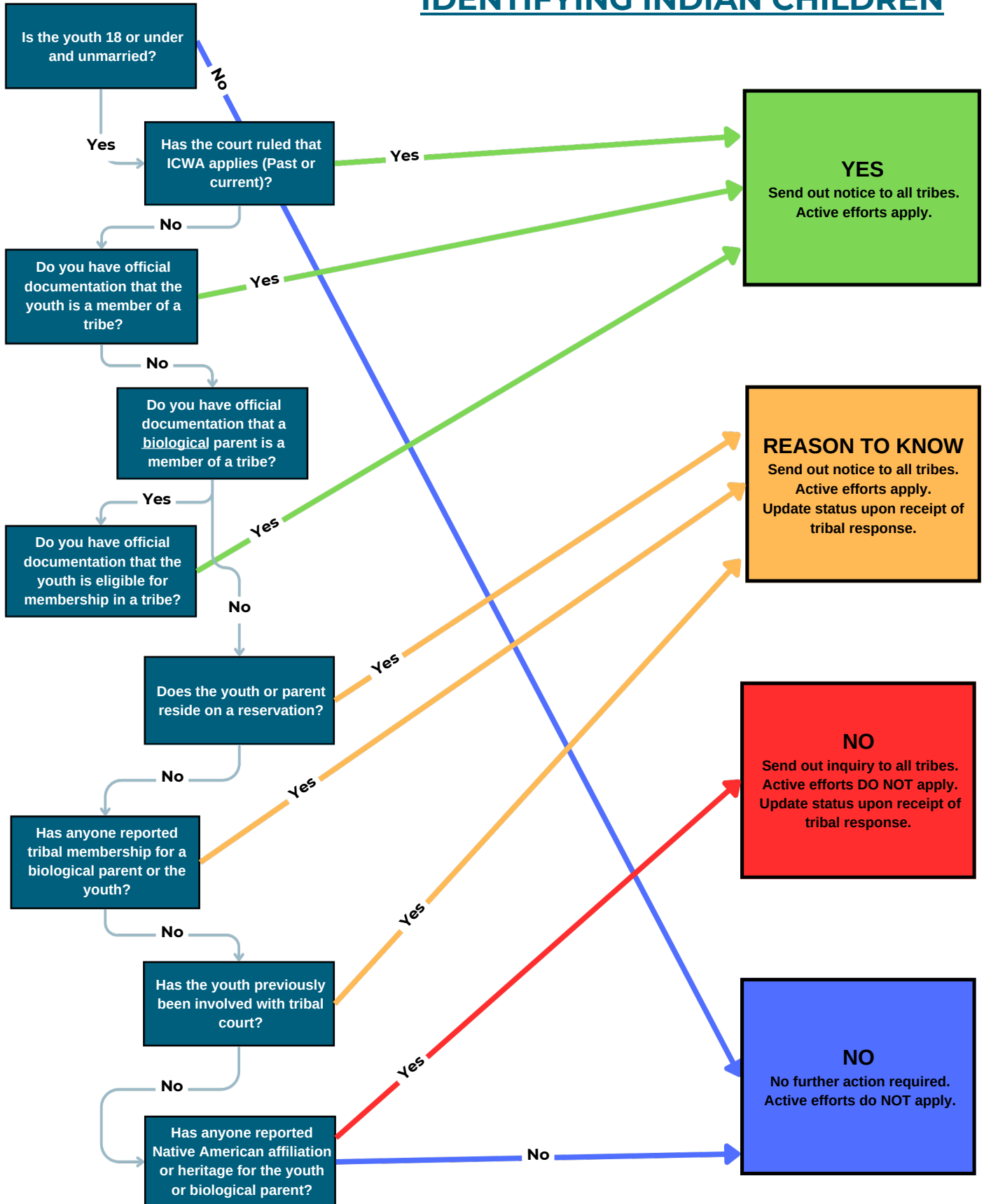
- A court has ruled that ICWA applies (past or current);
- There is official documentation that the youth is a member of a tribe;
- There is official documentation that a biological parent is a member of a tribe, AND documentation that the youth is eligible for membership in a tribe.

REASON TO KNOW

The CFSS will have Reason to Know that a child is an Indian Child if:

- Any person informs the CFSS that the child is an Indian Child or discovered information indicating the child is an Indian Child;
- CFSS is informed that the domicile or residence of the child, child’s parent, or child’s Indian custodian is on a reservation or in an Alaskan Village;
- The CFSS is informed that the child is or has been a ward of a tribal court; or
- The CFSS is informed that either parent or the child possesses an identification card indicating membership in an Indian tribe.
- One or both of the child’s biological parents is reported to be a member of a federally recognized Indian tribe.

IDENTIFYING INDIAN CHILDREN



Active Efforts

§43-1503(1); § 43-1505(4); 25 CFR 23.2

WHAT ARE ACTIVE EFFORTS?

Active efforts means providing case management that is:

- 1 More than reasonable efforts to preserve and reunify the family;
- 2 Culturally relevant;
- 3 Tailored to the facts and circumstances of the case;
- 4 Conducted in partnership with the Indian child and the Indian child's parents, extended family members known to DHHS, Indian custodian, and tribe; and
- 5 Actively assisting with accessing or developing resources necessary to satisfy the case plan.

Active efforts reports are required at EVERY COURT HEARING and must be sent to the tribe within 3 days of filing.

**3
DAYS**

Active Efforts include, but are not limited to:

- › Identifying and engaging tribe's ICWA Specialist.
- › Exhausting tribally appropriate family preservation services.
- › Asking family and tribe's ICWA Specialist about traditional customary support and services provided by the tribe or extended family.
- › Informing and actively assisting family in accessing resources (housing, financial, transportation).
- › Promoting and monitoring family's access to and progress in culturally appropriate resources provided by extended family, tribe, tribal community, or Indian Caregiver.

**SEE ICWA
FIELD
GUIDE #6**

The chart below provides examples of how to distinguish what is considered a reasonable effort and what could be considered as an active effort. This list is not exhaustive. Active efforts are meant to creatively provide services and support that are tailored to the unique strengths, needs, and culture of the family.

Reasonable Efforts	Active Efforts
	Contact all tribes identified by the family to determine the child's eligibility
	If a child is eligible for membership, assist the family with the enrollment process.
	Monthly phone and/or email contact with the Tribal ICWA Specialist to receive input and provide updates even if the tribe does not respond.
Holding family team meetings and face-to-face contacts	Including ICWA Specialist in Family Team Meetings and face-to-face visits, allowing for flexibility in attendance (i.e. phone or video).
Creating a safety network	Reaching out to relatives and tribal members to participate in the safety network.
Asking parents who their informal supports are	Working with extended family members to provide informal support for the family
Placing with appropriate family member	Providing resources/services to relatives to make them an appropriate placement
Placing siblings together	Buying beds or bunk beds so siblings can be placed together
Arrange sibling visits when placed separately	Provide supervision and/or transportation for visits to occur
Arrange supervised parenting time	Secure or provide transportation for parents to parenting time
Home studies for possible placement providers	Arrange visitation and provide hotel and gas vouchers for relatives
	Developing a cultural plan specific to the child with input from the biological family
Connecting family to appropriate services	Actively assisting the parents to overcome barriers to obtain such services (Transportation, scheduling, financial).
Arrange a parent partner	Work with tribe to identify tribal member to serve as parent partner
Enrollment in and payment for treatment	Consult with family and tribe regarding culturally appropriate treatment services and healing practices
Complete a family finding referral	Work with family finding to identify and involve relative and kin in the case plan
	Active efforts staffing with DHHS Tribal Program Team (contact dhhs.icwa@nebraska.gov)

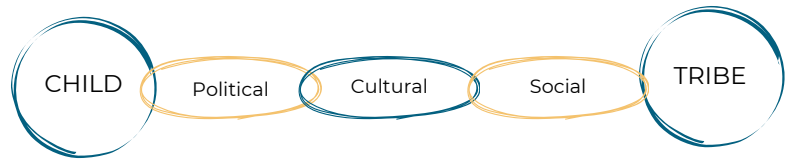
SEE ICWA FIELD GUIDE #5

Placement Guidelines

§43-1503(2); § 43-1508

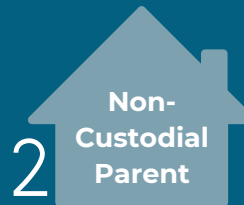
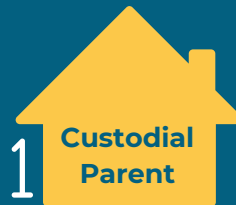
BEST INTERESTS FOR OUT OF HOME PLACEMENT

Placement should reflect unique values of the child's tribal culture and be able to assist the child in establishing and developing the political, cultural, and social relationship with the child's Tribe(s) and Tribal Community.



If a tribe does not have its own set of preferences, placement follows standards set forth in statute.

Before applying ICWA placement guidelines:



FOSTER CARE OR PREADOPTIVE PLACEMENT PREFERENCES

When considering foster placement for children covered by ICWA, placements must first:

- Be the least restrictive setting
- Consider and meet the child's special needs
- Be within a reasonable proximity to the child's home

Preferences given in **descending** order:

1. A member of child's extended family
2. Other members of the child's tribe(s)
3. A foster home licensed, approved or specified by the child's tribe(s)
4. An Indian foster home licensed or approved by an authorized non-Indian licensing authority
5. A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's tribe(s)
6. An Indian facility or program approved by an Indian tribe or operated by an Indian organization which has a program suitable to the child's needs
7. A non-Indian facility or program for children approved by an Indian tribe

ADOPTIVE PLACEMENT PREFERENCES

There are also placement guidelines in any adoptive placement of an Indian child, which apply unless the tribe has its own placement preferences. These must be considered as soon as the primary permanency objective changes from reunification.

Preferences given in **descending** order:

1. A member of the Indian child's extended family
2. Other members of the Indian child's tribe(s)
3. Other Indian families
4. A non-Indian family committed to enabling the child to have extended family time and participation in the cultural and ceremonial events of the Indian child's tribe(s)

DEVIATION FROM PLACEMENT PREFERENCES

Any party can present to the court by clear and convincing evidence good cause to deviate from preferences:

- Parent Preference
- Child preference if the child is at least 12 years old
- Extraordinary physical or emotional needs of child (need expert testimony)
- Unable to comply with preference after diligent search

Develop a plan with tribe's ICWA specialist, foster family, parent/custodian, family, and child!

Tribes can have their own definition of "family."

CULTURAL PLANS

Cultural plans contain strategies to promote connectedness to extended family and tribal members, and their customs and culture. They are reviewed annually or within two weeks of a placement change.

A plan is **required** if the child is:

1. Placed in a non-Indian home *OR*
2. Child is placed in an Indian home not affiliated with the child's tribe.

Tribe's ICWA Specialist

WHAT TO ASK THE TRIBE'S ICWA SPECIALIST

ACTIVE EFFORTS

- Do you believe active efforts have been provided?
- What services may be available to the child(ren) and family through your tribe?
- What culturally relevant services would you like DHHS to seek for this family?

NOTICE

- Did you receive the ICWA notice about the child(ren) involved in this case?
- Do you need additional information to verify eligibility?

TRIBAL INVOLVEMENT

- Do you need more information to make a determination about intervention or transfer of jurisdiction?

PLACEMENT

- Does the tribe have its own placement preferences?
- Do you know of any relatives or other tribal members who may be willing and available to be considered for placement?
- Do you have information we should include in a cultural plan?
- Are you or is someone in your tribe able to assist us with developing a cultural plan?

QUALIFIED EXPERT WITNESS (QEW)

- Do you or does someone in your office serve as a QEW for your tribe's ICWA cases? Or, does the tribe have a policy about QEW?
- Does your tribe have a tribal resolution identifying who may serve as a QEW for your tribe's ICWA cases?
 - May the County Attorney contact those QEWs directly or should requests for QEW testimony go through your office?

GENERAL COMMUNICATION

- What is the best way to contact you with updates and to provide case documents?
- Do you want to participate in meetings by telephone? If you cannot participate, may I send you an email update about case meetings?
- Do you know how to participate in court hearings by phone? (Provide Contact information for the Judge's bailiff or the clerk of courts.)

Tribe's Response to Notice

As sovereign nations, tribes have sole authority to determine membership within the tribe. After you provide the required notice to a tribe, there are four possible responses you might receive from the tribe.

Note: The tribe is NOT required to respond to notice in order for ICWA to apply.

TRIBE'S RESPONSE	DOES ICWA APPLY?	COULD ICWA APPLICABILITY CHANGE?
Child is a member	YES	NO
Child is eligible for membership and parent is a member	YES	NO
Child is eligible for membership but parent is not a member of the child's tribe	MAYBE	YES <ul style="list-style-type: none"> Parent could be a member in a different tribe
Child is not a member nor eligible for membership	NO	YES <ul style="list-style-type: none"> Child or parent could be a member in a different tribe Tribe could change membership requirements Child or parent could become a member at a later date
No response regarding child's membership nor eligibility	MAYBE	YES <ul style="list-style-type: none"> All cases (Court and Non-Court) <ul style="list-style-type: none"> Send email to dhhs.icwa@nebraska.gov MONTHLY Contact tribe's ICWA Specialist monthly Court <ul style="list-style-type: none"> Share status with county attorney and DHHS legal

Practice Tip!

If family provides information or there is reason to know the child is an Indian Child, DHHS must comply with ICWA pending tribe(s) response.

Tribal Involvement

HOW COULD TRIBES BE INVOLVED?

Tribes have five options when an Indian Child has been identified. In all cases the tribe *may* participate in or consult on family team meetings and other case planning meetings. The tribe *may* also identify or provide culturally relevant services.

1 NO TRIBAL INVOLVEMENT

Tribes are **not required** to participate in services or proceedings.

2 TRIBAL INVOLVEMENT

The tribe may participate, consult, or provide services in both non-court and court-involved cases.

3 INTERVENTION

The tribe could become a party to the juvenile case.

When is intervention for the child's tribe(s) denied?

→ NEVER

What are the tribe's rights?

→ Call witnesses

→ Present recommendations

→ Have a representative present (may not be an attorney)

→ Participate by telephone or live audiovisual means

When can the tribe be involved?

→ ANY stage of the case

When a tribe selects any of the options above, DHHS is responsible for case management.

Practice Tip!
Compliance with ICWA is mandatory regardless of the type of tribal involvement.

4

EXCLUSIVE JURISDICTION

The tribal court is the only court that has the right to hear the case.

When does a tribe have exclusive jurisdiction?

- Indian child is a ward of tribal court OR
- Indian child resides or is domiciled on a reservation

5

TRANSFER

The juvenile court sends the case to the tribal court.

Who can request a transfer to tribal court?

- Tribe
- Either parent or Indian Custodian

When can a case be transferred?

- Any stage of the case

When is a transfer denied?

- Either parent objects
- Tribal court declines
- The juvenile court finds good cause not to transfer

What qualifies as good cause for the juvenile court to deny transfer?

- No tribal court to hear case
- Other grounds determined on a case-by-case basis

Practice Tip!

Whenever transfer is possible, contact DHHS Legal and DHHS ICWA Program Specialist.

If exclusive jurisdiction or tribal court accepts transfer of the case, the tribe is responsible for case management and DHHS is no longer involved.

Qualified Expert Witness (QEW)

§43-1503 (15); §43-1505 (5) & (6)

WHAT IS A QEW?

An expert witness testifying that the “continued custody of the child by the parent or Indian custodian is likely to result in serious emotional physical damage to the child.”

WHO QUALIFIES AS A QEW?

In identifying a QEW, specific qualifications should be considered. Preference is given to people who are experienced and/or knowledgeable about the social and cultural standards and childrearing practices within the Indian child’s tribe. As a last resort, a professional with substantial education in his or her specialty may serve as a QEW.

HOW IS A QEW IDENTIFIED?

The tribe’s ICWA Specialist may know if the tribe has identified tribal members or other individuals to serve as QEWs in ICWA cases. You should share any names and contact information with the county attorney immediately.

WHEN IS A QEW REQUIRED?

- Child Custody Proceeding
- Termination of Parental Rights

Practice Tip!
It is ultimately the responsibility of the county attorney to secure a QEW, but the CFSS can assist. CFSS can provide the QEW with information and documentation.

Relinquishment

§43-1506



REQUIREMENTS

1. In writing
2. Executed before a judge
3. Certified by a judge that terms and consequences were explained and understood.
4. Certified by a judge that the hearing was in a language the parent understood
5. Child is at least 10 days old

Practice Tip!

ICWA still applies after a relinquishment or TPR in both court and non-court cases.

Differences for ICWA Cases

- Parent may withdraw relinquishment for any reason before the decree or order of final termination.
- Parent may withdraw relinquishment if obtained through fraud or duress for up to 2 years after adoption decree
- Separate notice of final adoption order must be sent to the Department of Interior.

NOTES

Resources

Additional ICWA Resources

Bureau of Indian Affairs Department of the Interior

BIA - Great Plains Regional Office

Human Services - MC-303

115 4th Avenue SE, Suite 400 Aberdeen, SD 57401

Telephone: (605) 226-7343 | Fax: (605) 226-744 | Email: bia.icwa@bia.gov

<https://www.bia.gov/bia/ois/dhs/icwa>

Code of Federal Regulations

Indian Child Welfare Act

<https://www.federalregister.gov/documents/2016/06/14/2016-13686/indian-child-welfare-act-proceedings>

BIA Guidelines for Implementing the ICWA

<https://www.bia.gov/sites/default/files/dup/assets/bia/ois/pdf/idc2-056831.pdf>

National Indian Child Welfare Association

www.nicwa.org

Native American Rights Fund

www.narf.org

NDHHS Public Site

<https://dhhs.ne.gov/Pages/Indian-Child-Welfare.aspx>

Nebraska Indian Child Welfare Coalition (NICWC)

www.nicwc.org

FOR ADDITIONAL INFORMATION CONTACT

Amanda Docter | *DHHS Tribal Program Manager*

amanda.docter@nebraska.gov

Jackie Gloystein | *DHHS ICWA Program Specialist*

jackie.gloystein@nebraska.gov

Jill Holt | *NICWC Trainer*

jill@nicwc.org

MC# _____

Family _____

Docket # _____

Judge _____

Tribe(s) _____

Youth

Name: _____

DOB: _____

Place: _____

What was reported? (ie Who is enrolled? Which side is the heritage on? Who reported it?)

Inquiry Notice

Ancestry Chart

Father

Name: _____

DOB: _____

Place: _____

Mother

Name: _____

DOB: _____

Place: _____

P. Grandfather

Name: _____

DOB: _____

Place: _____

P. Grandmother

Name: _____

DOB: _____

Place: _____

M. Grandfather

Name: _____

DOB: _____

Place: _____

M. Grandmother

Name: _____

DOB: _____

Place: _____

Name: _____

DOB/Place: _____

Name: _____

DOB/Place: _____

Name: _____

DOB/Place: _____

Name: _____

DOB/Place: _____

Name: _____

DOB/Place: _____

Name: _____

DOB/Place: _____

Name: _____

DOB/Place: _____

Name: _____

DOB/Place: _____

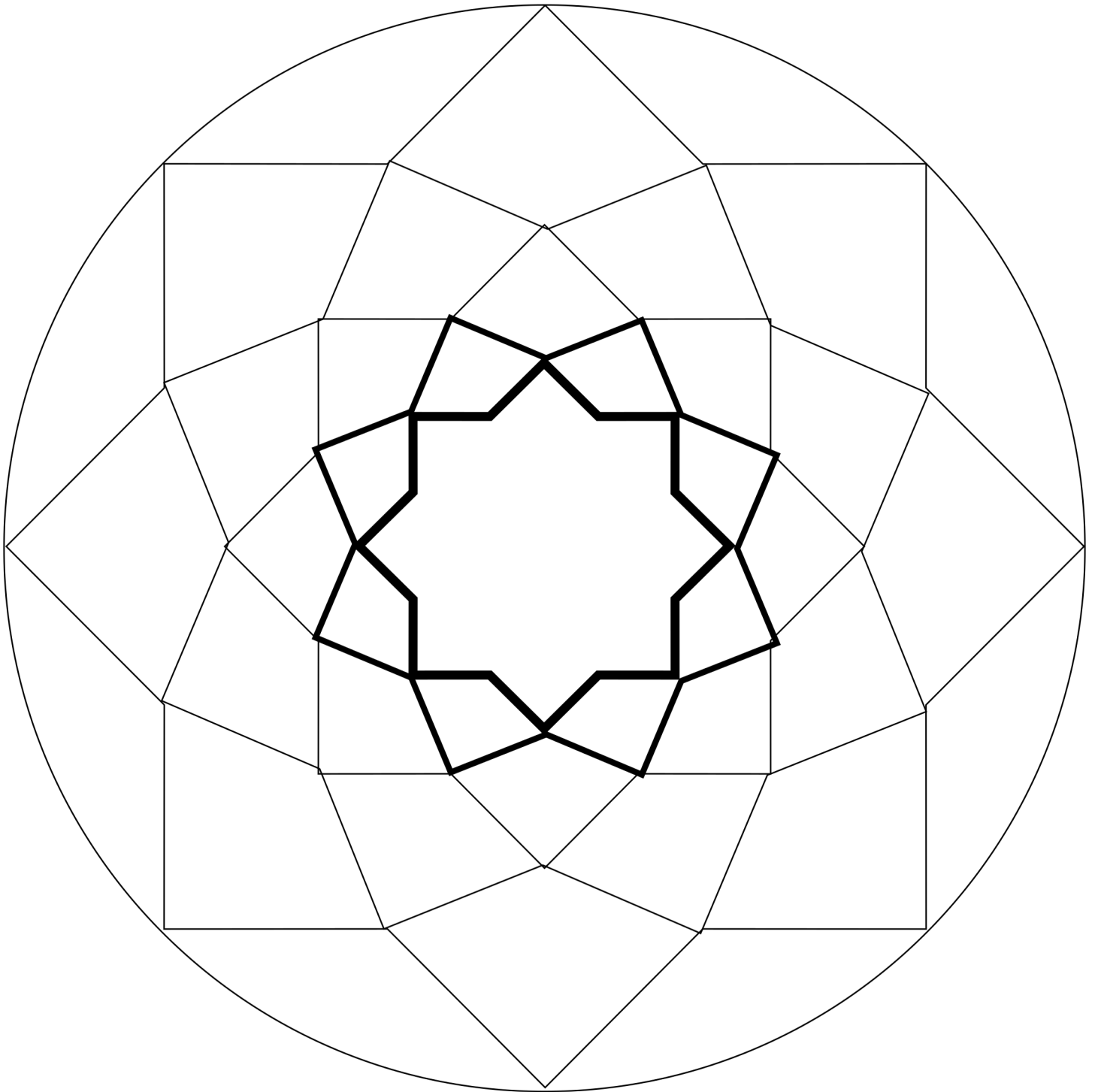
Visual Family Map

List everyone who lives in your home in the center of dream catcher.

Assign each member a color to write in their specific people/relationships.

For relationships that support all members use BLACK.

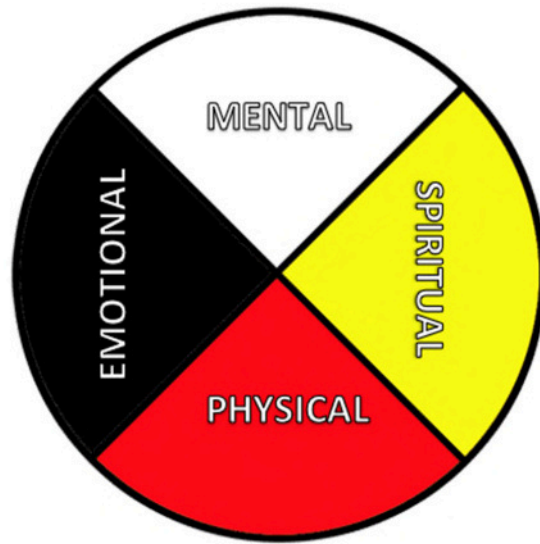
Strongest Relationships closest to center, most difficult to outside (Family—Strongest—Good—Weak—Difficult)



NATIVE AMERICAN CULTURAL PLAN

Date of plan:

, MC#



“The Medicine Wheel is a sacred symbol used by the indigenous Plains tribes to represent all knowledge of the universe. The Medicine Wheel is a symbol of hope — a movement toward healing for those who seek it.” -from Black Elk Speaks by John G. Neihardt

Child’s Tribe(s):

Tribe	Contact Person/Info	Tribal Membership	Affiliation
Primary Tribe: <input type="text"/>	<input type="text"/>	<input type="text" value="Unknown"/>	<input type="text"/>
Add’l Tribe: <input type="text"/>	<input type="text"/>	<input type="text" value="Unknown"/>	<input type="text"/>
Add’l Tribe: <input type="text"/>	<input type="text"/>	<input type="text" value="Unknown"/>	<input type="text"/>

Placement Resource:

Participants:

NATIVE AMERICAN CULTURAL PLAN

Date of plan: []

[], MC# []

Emotional Dimension

The emotional dimension of the cultural plan should describe how the child will build and/or maintain relationships with relatives (biological, tribal, or other). Examples could include visitation or trips to the tribal community.

Goal(SMART Goal, reflecting permanency objective and child developmental stage)

Activities (who is responsible and when/where the activity will occur, be as specific as possible)

Progress(did activities occur as planned, are there any additional resources needed?)

Physical Dimension

The physical dimension of the cultural plan should describe how the child will develop and/or maintain a connection to the concrete aspects of his/her culture. Examples could include food, clothing, or music.

Goal(SMART Goal, reflecting permanency objective and child developmental stage)

Activities (who is responsible and when/where the activity will occur, be as specific as possible)

Progress(did activities occur as planned, are there any additional resources needed?)

NATIVE AMERICAN CULTURAL PLAN

Date of plan: []
[], MC# []

Mental Dimension

The mental dimension of the cultural plan should describe how a child will learn about his/her Native culture. Examples could include language and/or history of the Tribe.

Goal(SMART Goal, reflecting permanency objective and child developmental stage)

Activities (who is responsible and when/where the activity will occur, be as specific as possible)

Progress(did activities occur as planned, are there any additional resources needed?)

Spiritual Dimension

The spiritual dimension of the cultural plan should describe how a child will participate in the spiritual life of the Tribe. Examples could include preparation and participation in ceremony, prayer, or other rites.

Goal(SMART Goal, reflecting permanency objective and child developmental stage)

Activities (who is responsible and when/where the activity will occur, be as specific as possible)

Progress(did activities occur as planned, are there any additional resources needed?)

