

Placement Preferences Questions and Answers

Baby Boy Barehand is born on September 1, 2008 with cocaine in his system. He has complications and will be in the hospital for a week. The Department of Human Services is notified. Biological mother is Caucasian. This is her first child. The child's father is confirmed to be a citizen of a federally recognized Indian tribe, however he is deceased. Caseworker Dave following DHS Departmental policy confirms that the child is eligible for enrollment.

Does ICWA apply?

- Yes. ICWA follows the child and therefore the non-Indian mother is treated exactly the same under ICWA as an Indian mother. 25 U.S.C. § 1903.

An abuse case is opened. Although not required by ICWA, caseworker Dave decides to notify the child's tribe immediately and he asks them if they have any culturally appropriate services to offer the biological mother. An investigation occurs, and the case worker learns that the biological mother is still using, has no legal source of income, and is homeless. DHS files a petition to remove the child, giving the tribe and the biological mother notice by registered mail with return receipt requested. 25 U.S.C. § 1912.

A hearing is set to determine whether foster care is appropriate. DHS must prove by clear and convincing evidence through the testimony of a qualified expert witness that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child. Caseworker Dave, who now has a good working relationship with the child's tribe, calls the tribe to ask for a tribally approved expert witness to testify for the state. The tribe approves the tribal social worker following the case as a qualified expert witness. While the petition to remove is pending, caseworker Dave begins looking for an appropriate foster care placement for Baby Barehand.

First, caseworker Dave asks the child's tribe if they have changed the placement preferences under ICWA by tribal code or resolution. This tribe has not changed the placement preferences of ICWA so caseworker Dave begins looking for an appropriate relative placement under ICWA.

Either the biological mother's non-Indian parents or the biological father's tribal member parents may be an appropriate placement. Because the tribal member grandparents can better maintain Baby Barehand's connection to his tribe and because the tribal grandparents live closer to the biological mother, caseworker Dave first investigates whether the tribal grandparents would be an appropriate placement. Unfortunately, the tribal grandparents have health concerns that would prevent them from caring for a newborn child.

Next, Caseworker Dave investigates whether the non-Indian grandparents would be an appropriate placement. Unfortunately, the non-Indian grandparents are on the Central registry.

Can Dave stop looking for a relative placement here?

- No. The ICWA defines extended family member for purposes of the Act as defined by the law or **custom** of the Indian child's tribe. In the absence of a tribal law definition, the ICWA defines extended family member as a person who has reached the age of eighteen and who is the **Indian child's grandparent, aunt or**

uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

- The BIA Guidelines state that a “diligent attempt” to find a suitable family meeting the preference criteria must be made. The Guidelines define a “diligent attempt” as, "at a minimum, contact with the child tribal social services department, a search of all county or state listings of available Indian homes and contact with nationally known Indian programs with available placement resources.”

Caseworker Dave asks the tribe for assistance in identifying a relative placement.

After exhausting potential relative placements, Caseworker Dave and the tribal social services worker start looking within Baby Barehand's tribe for a potential foster care home. Although the tribe has licensed several foster homes (both Native and non-Native), they are all at capacity. Caseworker Dave asks if the tribe could approve or specify another foster home. The tribe cannot at that time.

Caseworker Dave contacts private agencies within the State looking for licensed Native American homes. He calls Binogii, MICWA, Child and Family Services, Lutheran and others.

What constitutes an Indian home?

- The only homes that qualify as Indian are homes containing a *parent* that is a tribal citizen. Dave cannot find an available Native American licensed placement.

Caseworker Dave contacts Baby Barehand’s tribe and asks if there are any institutions for children approved by the tribe or any Indian organizations which have a program suitable to meet the Indian child's needs. Baby Barehand’s tribe does not want the child in an institution.

What can Caseworker Dave do now?

- He can ask the tribe to pass a resolution changing the placement preferences for Baby Barehand to include a non-Indian state licensed foster home.

The tribe passes a resolution changing the placement preferences allowing a non-Indian, non-relative placement. Baby Barehand leaves the hospital with his non-Indian, state licensed foster parents.

When will you have non-Indian foster homes for Native American children?

- First, if the child has an appropriate, non-Indian relative placement.
- Second, if the tribe has licensed the non-Indian home.
- Third, placement of an Indian child with a non-Indian family can occur if the child’s tribe passes a resolution changing the placement preferences.
- Fourth, DHS gets a Court Order finding that “good cause” exists not to follow the placement preferences.