

Dear Senators LODGE, Broadsword, Bock, and
Representatives BLOCK, Hartgen, Ringo:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Department of Health and Welfare - Child Welfare:
IDAPA 16.06.01 - Rules Pertaining To Child and Family Services (Docket No. 16-0601-1101).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 09/30/2011. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 10/28/2011.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address or FAX number indicated on the memorandum enclosed.



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Commerce & Human Resources Committee
FROM: Legislative Research Analyst - Ryan Bush
DATE: September 13, 2011
SUBJECT: Department of Health and Welfare - Child Welfare

IDAPA 16.06.01 - Rules Pertaining To Child and Family Services (Docket No. 16-0601-1101)

The Department of Health and Welfare submits notice of proposed rulemaking at IDAPA 16.06.01 - Rules Pertaining To Child and Family Services. The Department states that the proposed rulemaking is needed to streamline the "Notice of Pending Proceedings" to any and all tribes regarding children who may be subject to the federal Indian Child Welfare Act (ICWA), 25 U.S.C. Sections 1901-1963. The Department further states that the proposed rulemaking removes errors, inconsistencies and redundancies from the current chapter of rules regarding ICWA compliance. Specifically, the proposed rulemaking accomplishes the following:

- (1) Revises the definitions of Indian child, qualified expert witness - ICWA, reservation and alternate care (placement) services;
 - (2) Adds to and revises protections and safeguards for children and families;
 - (3) Amends the notice requirements for ICWA;
 - (4) Revises the attendance requirements at permanency hearings;
 - (5) Amends the requirements for voluntary and involuntary placement of Indian children;
 - (6) Eliminates periodic review of benefits from the Bureau of Indian Affairs;
 - (7) Revises the family history information to be placed in an Indian child's permanent adoption record;
- and
- (8) Amends the requirements of information reported to the court in a petition for involuntary termination of parental rights.

The Department states that negotiated rulemaking was not conducted because the proposed changes are being made to clarify and streamline rules related to the Indian Child Welfare Act (ICWA). There is no negative fiscal impact resulting from this rulemaking.

The proposed rule appears to be in conformity with the Indian Child Welfare Act, 25 U.S.C. Sections 1901-1963, and within the authority granted to the Department in Sections 56-202(b), 56-204A, 56-803, 16-1629 and 39-1209 through 1211, Idaho Code.

cc: Department of Health and Welfare - Child Welfare
Kathy Morris

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.01 - CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-1101

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-1629, 16-2102, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-204A, 56-803, 56-1003, 56-1004, and 56-1004A, Idaho Code; and 25 U.S.C. Sections 1901-1963 (Indian Child Welfare Act).

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2011.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule change is needed to streamline the "Notice of Pending Proceedings" to any and all tribes regarding children who may be subject to the federal Indian Child Welfare Act (ICWA). This rule change removes errors, inconsistencies, and redundancies from the current chapter of rules in Sections regarding compliance with ICWA.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Relative to the state general fund, this rulemaking is budget neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rule changes are being made simply to clarify and streamline rules related to the Indian Child Welfare Act (ICWA).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kathy Morris at (208) 334-5706.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2011.

DATED this 9th day of August, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
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THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE FOR DOCKET NO. 16-0601-1101

011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.

For the purposes of these rules, the following terms are used: (5-8-09)

01. Family. Parent(s), legal guardian(s), related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (5-3-03)

02. Family Assessment. An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and safety threats to family integrity, unity, or the ability to care for their members. (3-30-07)

03. Family Case Record. Electronic and hard copy compilation of all documentation relating to a family, including legal documents, identifying information, and evaluations. (5-8-09)

04. Family (Case) Plan. Also referred to as a family service plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how, and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders or leaders should be consulted early in the plan development. (3-30-07)

05. Family Services Worker. Any of the direct service personnel, including social workers, working in regional Child and Family Services Programs. (5-8-09)

06. Federally-Funded Guardianship Assistance for Relatives. Benefits described in Subsection 702.04 and Section 703 of these rules provided to a relative guardian for the support of a child who is fourteen (14) years of age or older, who, without guardianship assistance, would remain in the legal custody of the Department of Health and Welfare. (4-7-11)

07. Field Office. A Department of Health and Welfare service delivery site. (3-18-99)

08. Goal. A statement of the long term outcome or plan for the child and family. (3-18-99)

09. Independent Living. Services provided to eligible foster or former foster youth, ages fifteen (15) to twenty-one (21), designed to support a successful transition to adulthood. (3-30-01)

10. Indian. Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-18-99)

11. Indian Child. Any unmarried person who is under the age of eighteen (18) who is: (3-18-99)

a. A member of an Indian tribe; or ~~(3-18-99)~~()

b. Eligible for membership in an Indian tribe, and who is the biological child of a member of an Indian tribe. ~~(3-18-99)~~()

12. Indian Child Welfare Act (ICWA). The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (3-18-99)

13. Indian Child's Tribe. (3-18-99)

a. The Indian tribe in which an Indian child is a member or eligible for membership, or (3-18-99)

b. In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-18-99)

14. Indian Tribe. Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-18-99)

15. Intercountry Adoption Act of 2000 (P.L. 106-279). Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (5-3-03)

16. Interethnic Adoption Provisions of 1996 (IEP). IEP prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent(s), or the child involved. (4-7-11)

17. Interstate Compact on the Placement of Children (ICPC). Interstate Compact on the Placement of Children (ICPC) in Chapter 21, Title 16, Idaho Code, ensures that the jurisdictional, administrative, and human rights obligations of interstate placement or transfers of children are protected. (3-20-04)

18. Kin. Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers, and members of a child's Indian tribe. Also known as fictive kin. (3-30-01)

012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.

For the purposes of these rules, the following terms are used: (5-8-09)

01. Legal Guardianship. A judicially-created relationship, in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including one made by a tribal court, between a child and a relative or non-relative. (4-7-11)

02. Licensed. Facilities or programs are licensed in accordance with the provisions of IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (3-30-07)

03. Licensing. See IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," Section 100. (3-30-07)

04. Medicaid. See "Title XIX." (3-30-01)

05. Multiethnic Placement Act of 1994 (MEPA). MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color, or national origin. (3-18-99)

06. Parent. A person who, by birth or through adoption, is considered legally responsible for a child. The term "legal guardian" is not included in the definition of parent. (5-8-09)

07. Permanency Planning. A primary function of family services initiated in all cases to identify programs, services, and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (3-18-99)

08. Personal Care Services (PCS). Services to eligible Medicaid recipients that involve personal and medically-oriented tasks dealing with the physical or functional impairments of the individual. (3-18-99)

09. P.L. 96-272. Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980." (3-30-01)

10. P.L. 105-89. Public Law 105-89, the federal “Adoptions and Safe Families Act of 1997,” amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (3-30-01)

11. Planning. An orderly rational process which results in identification of goals and formulation of timely strategies to fulfill such goals, within resource constraints. (3-30-01)

12. Qualified Expert Witness--ICWA. ~~A person who is most likely to be a qualified expert witness in the placement of an Indian child is:~~ An individual who is an expert regarding tribal customs pertaining to family organization and child rearing practice, and is qualified to render an opinion as to whether continued custody of the child by the parent(s), or Indian custodian(s), is likely to result in serious emotional or physical damage to the child. (3-18-99)()

~~a. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child-rearing practices;~~ (3-18-99)

~~b. An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child's tribe;~~ (3-18-99)

~~c. A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child-rearing practices within the Indian community;~~ or (3-18-99)

~~d. An individual regarded as being a qualified expert who is referred by the Indian child's tribe, the Department's ICWA Specialist, or the Bureau of Indian Affairs.~~ (3-18-99)

13. Relative. Person related to a child by blood, marriage, or adoption. (3-30-01)

14. Relative Guardian. A relative who is appointed a child's legal guardian in accordance with Title 15, Chapter 5, Part 2, Idaho Code, including a guardianship established by a tribal court. (4-7-11)

15. Reservation. ~~Indian country as defined in 18 U.S.C. Section 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. Such term includes but is not limited to the Kootenai Reservation, the Coeur d'Alene Reservation, the Nez Perce Reservation, the Duck Valley Reservation, and the Shoshone-Bannock Reservation.~~ A reservation is an area of land “reserved” by or for an Indian band, village, or tribe(s) to live on and use. Reservations were created by treaty, by congressional legislation, or by executive order. Since 1934, the Secretary of the Interior has had the responsibility of establishing new reservations or adding land to existing reservations. (3-18-99)()

16. Respite Care. Time-limited care provided to children. Respite care is utilized in circumstances which require short term, temporary care of a child by a licensed or agency-approved caregiver different from his usual caregiver. The duration of an episode of respite care ranges from one (1) partial day up to fourteen (14) consecutive days. (5-8-09)

17. Responsible Party. A Department social worker, clinician, or contracted service provider who maintains responsibility and authority for case planning and case management. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

030. CORE CHILD AND FAMILY SERVICES.

The following core services are the state and federally mandated services provided by or through regional Child and Family Services offices: (5-8-09)

01. Crisis Services. Crisis Services are an immediate response to ensure safety when a child is believed to be in imminent danger as a result of child abuse, neglect, or abandonment. Crisis services require immediate access to services, twenty-four (24) hours per day, seven (7) days per week to assess safety and place in alternate care, if necessary, to ensure safety for the child. (4-7-11)

02. Screening Services. Initial contact with families and children to gather information to determine whether or not the child meets eligibility criteria to receive child protection or adoption services. When eligibility criteria is not met for Department mandated services, appropriate community referrals are made. (5-8-09)

03. Assessment and Safety/Service Planning Services. Process in which the safety threats to the child, and the family's concerns, strengths, and resources are identified. Based on this assessment, a written plan is developed by the worker, together with the family and other interested parties. Each plan must have a long-term goal that identifies behaviorally-specific and measurable desired results and has specific tasks that identify who, how, and when the tasks will be completed. (4-7-11)

04. Preventative Services. Community-based services which support children and families and are designed to reduce the risk of child abuse, neglect, or abandonment. These services can involve direct services, but are primarily implemented through community education, and partnerships with other community agencies such as schools and courts. (5-8-09)

05. Court-Ordered Services. These services primarily involve court-ordered investigations or assessments of situations where children are believed to be at risk due to child abuse, neglect, or abandonment. (5-8-09)

06. Alternate Care (Placement) Services. Temporary living arrangements outside of the family home for children and youth who are victims of child abuse, neglect, or abandonment. These out-of-home placements are arranged for and financed, in full or in part, by the Department. Alternate care is initiated through either a court order or voluntarily through an out-of-home placement agreement. Payment will be made on behalf of a child placed in the licensed home of an individual or relative, a public or private child care institution, a home licensed ~~or~~ approved ~~or~~ *specified* by an Indian child's tribe, or in a state-licensed public child care institution accommodating no more than twenty-five (25) children. Payments may be made to individuals or to a public or private child placement or child care agency. (~~5-8-09~~) ()

07. Community Support Services. Services provided to a child and family in a community-based setting which are designed to increase the strengths and abilities of the child and family and to preserve the family whenever possible. Services include respite care and family preservation. (5-8-09)

08. Interstate Compact on Out-of-State Placements. Where necessary to encourage all possible positive contacts with family, including extended family, placement with family members or others who are outside the state of Idaho will be considered. On very rare occasion the Department may contract with a residential facility out of state if it best serves the needs of the child and is at a comparable cost to facilities within Idaho. When out-of-state placement is considered in the permanency planning for a child, such placement will be coordinated with the respective interstate compact administrator according to the provisions of Section 16-2101, et seq., Idaho Code, the "Interstate Compact on the Placement of Children." Placements must be in compliance with all state and federal laws. (5-8-09)

09. Independent Living. Services, including assessment and planning, provided to eligible youth to promote self-reliance and successful transition to adulthood. (5-8-09)

a. Eligibility Requirements for Current Foster Youth. To be eligible for independent living services, a current foster youth must: (5-8-09)

i. Be fifteen (15) to nineteen (19) years of age; (5-8-09)

ii. Currently be under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or be under a voluntary agreement for continued care if the youth is

between eighteen (18) and nineteen (19) years of age; and (5-8-09)

iii. Have been in foster care or similar eligible setting for a minimum of ninety (90) total days. (5-8-09)

b. Eligibility Requirements for Former Foster Youth. To be eligible for independent living services, a former foster youth must: (5-8-09)

i. Be a former foster youth who is currently under twenty-one (21) years of age; and (5-8-09)

ii. Have been under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or under a voluntary agreement for continued care after the youth has reached eighteen (18) years of age; and (5-8-09)

iii. Have been placed in foster care or similar eligible setting for a minimum of ninety (90) days total after reaching fifteen (15) years of age; or (5-8-09)

iv. Be eighteen (18) to twenty-one (21) years of age, provide verification of meeting the Independent Living eligibility criteria in another state, and currently be a resident of Idaho. (5-8-09)

c. Eligibility Limit. Once established, a youth's eligibility is maintained up to his twenty-first birthday, regardless of whether he continues to be the responsibility of the Department, tribe, or be in foster care. (5-8-09)

10. Adoption Services. Department services designed to promote and support the permanency of children with special needs through adoption. This involves the legal and permanent transfer of all parental rights and responsibilities to the family assessed as the most suitable to meet the needs of the individual child. Adoption services also seeks to build the community's capacity to deliver adoptive services. (3-30-01)

11. Administrative Services. Regulatory activities and services which assist the Department in meeting the goals of safety, permanency, health and well-being for children and families. These services include: (5-8-09)

a. Child care licensing; (3-30-01)

b. Daycare licensing; (3-30-01)

c. Community development; and (5-8-09)

d. Contract development and monitoring. (5-8-09)

031. -- 049. (RESERVED)

050. PROTECTIONS AND SAFEGUARDS FOR CHILDREN AND FAMILIES.

The federal and state laws which are the basis for these rules include a number of mandatory protections and safeguards which are intended to ensure timely permanency for children and to protect the rights of children, their families and their tribes. (4-7-11)

01. Reasonable Efforts. Services offered or provided to a family intended to prevent or eliminate the need for removal of the child from the family, to reunify a child with his family, and to finalize a permanent plan. The following efforts must be made and specifically documented by the Department in reports to the court. The court will make the determination of whether or not the Department's efforts were reasonable. (4-7-11)

a. Efforts to prevent or eliminate the need for a child to be removed from his home; (5-8-09)

b. Efforts to return a child home are not required due to a judicial determination of aggravated circumstances; and (5-3-03)

c. Efforts to finalize a permanent plan, so that each child in the Department's care will have a family with whom the child can have a safe and permanent home. (5-3-03)

02. **Active Efforts.** ~~For an Indian child, a description of the active~~ The efforts made required under ICWA to provide remedial services and rehabilitative programs designed to prevent the breakup of the an Indian family; that these efforts have proved unsuccessful; and that based on qualified expert information, continued custody by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child, or to reunify an Indian family. Active efforts must include contacts and work with an Indian child's tribe. (5-3-03)()

03. **ICWA Placement Preferences.** ~~If appropriate, application of the placement preference for placement in accordance with the Indian Child Welfare Act, or a detailed explanation of good cause for not applying the preferences.~~ (3-18-99)()

a. When the Indian child's permanency goal is reunification, the preferences are described in Section 402 of these rules. ()

b. When the Indian child's permanency goal is adoption or guardianship, the preferences are described in Subsection 800.01 of these rules. ()

c. When the placement preferences are not followed, the court must determine that good cause exists for not following the preferences. ()

04. **Least Restrictive Setting.** Efforts will be made to ensure that any child in the Department's care resides in the least restrictive, most family-like setting possible. Placement will be made in the least restrictive setting and in close proximity to the parent(s) or if not, written justification that the placement is in the best interest of the child. ~~For an Indian child, placement in the least restrictive setting is that setting which most approximates a family and is within reasonable proximity to the child's home taking into account any special needs of the child.~~ (4-7-11)()

05. **Legal Requirements for Indian Children.** ~~In the case of~~ When there is reason to believe that a child is an Indian child, notice of the pending proceeding must be sent ~~by Certified Mail, Return Receipt Requested to the parent(s) or Indian custodian(s) and the Indian child's tribe,~~ according to the notice provisions specified in Section 051 of these rules. Notice must also include ~~ge~~ notice of their ~~tribe's~~ right to intervene; their right to twenty (20) days additional time to prepare for the proceeding; the right to appointment of counsel if the parent(s) or Indian custodian(s) is indigent; and the right to examine all documents filed with the court upon which placement may be based; ~~and the right to withdraw consent to a voluntary foster placement.~~ (3-30-07)()

06. **Visitation for Child's Parent(s) or Legal Guardian(s).** Visitation arrangements must be provided to the child's parent(s) or legal guardian(s) unless visitation is contrary to the child's safety. (3-30-07)

07. **Notification of Change in Placement.** Written notification ~~to the child's parent(s) or legal guardian(s) must be made~~ within seven (7) days of a change of placement of the foster child if a child is relocated to another foster care setting, ~~or similar notice to the parent(s) or Indian custodian(s) of an Indian child, and the Indian child's tribe, which includes the information described in Section 051 of these rules entitled Notice Required for ICWA.~~ Notification must be sent to the child's parent(s) or legal guardian(s). When the child is an Indian child, written notification must also be sent to the child's Indian custodian(s), if applicable, and to the child's tribe. (5-3-03)()

08. **Notification of Change in Visitation.** Written notification to the child's parent(s) or legal guardian(s) if there is to be a change in their visitation schedule with their child or ward in foster care. (5-3-03)

09. **Notification of Right to Participate and Appeal.** Written notification to the child's parent(s) or legal guardian(s) must be made regarding their right to discuss any changes and the opportunity to appeal if they disagree with changes in placement or visitation. (3-30-07)

10. Qualified Expert Witness--ICWA--Placement Preferences. ~~Compliance with the foster care placement preferences of the Indian Child Welfare Act. The testimony of an expert witness is required at the hearing in which a child is placed in state custody, typically the adjudicatory, and at the hearing for termination of parental rights. A person who is most likely to be a qualified expert witness in the placement of an Indian child is:~~ (3-18-99)()

a. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child rearing practices; ()

b. An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or ()

c. A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community. ()

11. Compliance with Requirements of the Multiethnic Placement Act of 1994 (MEPA) as Amended by the Interethnic Adoption Provisions (IEP) of 1996. (4-7-11)

a. The Department prohibits entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program from delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective foster or adoptive parent's race, color, or national origin. (4-7-11)

b. The Department prohibits entities that are involved in foster care or adoption placements and that receive federal financial assistance under Title IV-E, Title IV-B, or any other federal program, from denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective foster or adoptive parent's or the child's race, color, or national origin; (4-7-11)

c. To remain eligible for federal assistance for their child welfare programs, the Department must diligently recruit foster and adoptive parents who reflect the racial and ethnic diversity of the children in the state who need foster and adoptive homes; (4-7-11)

d. A child's race, color, or national origin cannot be routinely considered as a relevant factor in assessing the child's best interests; (4-7-11)

e. Failure to comply with MEPA/IEP's prohibitions against discrimination is a violation of Title VI of the Civil Rights Act of 1964; and (4-7-11)

f. Nothing in MEPA/IEP is to be construed to affect the application of the Indian Child Welfare Act of 1978. (4-7-11)

12. Family Decision-Making and Plan Development. (3-30-01)

a. A family plan will be completed within thirty (30) days of the date the case was opened. (3-30-07)

b. Families will be given ample opportunity to participate in the identification of areas of concern, their strengths, and developing service goals and tasks. The family plan and any changes to it must be signed and dated by the family. If the family refuses to sign the plan, the reason for their refusal will be documented on the plan. (3-30-07)

c. Plans are to be reviewed with the family no less frequently than once every three (3) months. When there are major changes to the plan including a change in the long term goal, the family plan must be renegotiated by the Department and the family as well as signed by the family. A new plan must be negotiated at least annually. (3-30-01)

13. Compelling Reasons. Reasons why the parental rights of a parent of a child in the Department's care and custody should not be terminated when the child has been in the custody of the Department for fifteen (15) out of the most recent twenty-two (22) months. These reasons must be documented in the Alternate Care Plan, in a report to the court, and the court must make a determination if the reasons are sufficiently compelling. A compelling reason must be documented when a child's plan for permanency is not adoption, guardianship, or return home. When compelling reasons are not appropriate, the petition for termination of parental rights must be filed by the end of the child's fifteenth month in foster care. (5-3-03)

14. ASFA Placement Preferences. The following placement preferences will be considered in the order listed below when recommending and making permanency decisions: (5-8-09)

- a. Return home if safe to do so; (3-30-01)
- b. Adoption or legal guardianship by a relative or kin; (5-8-09)
- c. Adoption or legal guardianship by non-relative; (3-30-01)
- d. Another planned permanent living arrangement such as long-term foster care. (5-8-09)

051. NOTICE REQUIREMENTS FOR ICWA.

~~Wherever these rules require notice to the parent(s) or custodian(s) and tribe of an Indian child, notice must also be provided to the Secretary of the Interior by certified mail with return receipt requested to Department of the Interior, Bureau of Indian Services, Division of Social Services, Code 450, Mail Stop 310 SIB, 1849 C Street, N.W., Washington, D.C. 20240. In addition, under 25 CFR Section 23.11, copies of such notices must be sent by certified mail with return receipt requested to the Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232. If the identity or location of the parent(s) or Indian custodian(s) and the tribe cannot be determined, notice of the proceeding must be given to the Secretary, who must provide notice to the parent(s) or Indian custodian(s) and tribe. (5-8-09)~~

01. Notice of Pending Proceedings -- Who Must be Notified. When there is reason to believe that a child is an Indian child, the initial and any subsequent Notice of Pending Proceedings must be sent to the Indian child's parent(s), custodian(s), and tribe. Notices of Pending Proceedings must be sent to the ICWA Designated Agent for the child's tribe via Certified Mail, Return Receipt Requested. All Notices of Pending Proceedings must be received by the child's parent(s), Indian custodian(s) and tribe at least 10 (ten) days before the proceeding is scheduled to occur. Returned receipts are to be kept in the child's file and made available for review by the court. ()

02. Rights Under a Notice of Pending Proceedings. Notices of Pending Proceedings must also include notice of the tribe's right to intervene; their right to twenty (20) additional days to prepare for the proceedings; the right to appointment of counsel if the parent(s) or Indian custodian(s) are indigent; and the right to examine all documents filed with the court upon which placement may be based. ()

03. Notice of Pending Proceedings--When Identity or Location of Parent(s), Indian Custodian(s), or Tribe is Unknown. If the identity or location of the parent(s) or Indian custodian(s) or the tribe is unknown, the Notice of Pending Proceedings must be sent to the Secretary of the Interior by certified mail with a return receipt requested at the following address: Department of the Interior, Bureau of Indian Services, Division of Human Services, Code 450, Mail Stop, 1849 C Street N.W., Washington, D.C. 20240. ()

(BREAK IN CONTINUITY OF SECTIONS)

250. PERMANENCY HEARINGS.

By the provision of Public Law 105-89, Adoption and Safe Families Act, and Idaho Code, every child in alternate care under state supervision must have a permanency hearing conducted by the court or a court designee. Permanency hearings must be held no later than every twelve (12) months after the date of the child's placement in alternate care

and no later than every twelve (12) months thereafter as long as the child remains in alternate care. A twelve (12) month permanency hearing will be held by the court having jurisdiction in the case, if that is the preference of the court. If the court does not wish to conduct this hearing, the court may appoint a hearing officer. The appointed hearing officer may not be supervised or reimbursed by the Department. (5-8-09)

01. Attendance at Permanency Hearings. The permanency hearing includes, at a minimum, the child's parent(s) or legal guardian(s), foster parent(s) of a child, and any preadoptive parent(s) or relative(s) providing care for the child. In the case of an Indian child, the child's tribe and Indian custodian (*if there is one*), must also be ~~included~~ encouraged to participate in the permanency hearing. Parties will be provided, by the court, with written notice of the hearing and of their right to be heard. This is not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to the hearing solely on the basis the receipt of such notice. (5-8-09)()

02. Judicial Determinations. (3-30-01)

a. The court, or an officer designated by the court, will determine if the Department has made reasonable efforts to finalize a permanent plan for the child and issue an order specifying the permanent plan. (5-8-09)

b. In cases where the Department has documented, in the alternate care plan component of the family's service plan, compelling reasons for not terminating the parent and child relationship, the court reviews and determines if the compelling reasons exist. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

400. AUTHORITY FOR ALTERNATE CARE SERVICES.

Upon approval of the regional Child and Family Services Program Manager or his designee, the Department may provide or purchase alternative care under the following conditions: (5-8-09)

01. Department Custody. When the child is in the legal custody or guardianship of the Department; or (3-18-99)

02. Voluntary Placement. Upon agreement with the parent(s) or legal guardian(s) when circumstances interfere with their provision of proper care or they are no longer able to maintain a child in their home and they can benefit from social work and treatment services. A service plan and an out-of-home placement agreement must be developed between the Department and the family. The service plan will identify areas of concern, goals, desired results, time frames, tasks and task responsibilities. The out-of-home placement agreement will include the terms for reimbursement of costs with any necessary justification for deviation from Child Support guidelines. A voluntary agreement for out-of-home placement entered into between the Department and the parent(s) or legal guardian(s) of a minor child may be revoked at any time by the child's parent(s) or legal guardian(s) and the child must be returned to the parent or legal guardian upon their request. A contract between the Department and the service provider, if applicable, must also be in effect. Voluntary out-of-home placements exceeding one hundred eighty (180) days without a judicial determination that it is in the best interests of the child to continue his current placement, cannot be reimbursed by Title IV-E funds. (5-8-09)()

401. CONSIDERATIONS FOR PLACEMENT IN ALTERNATE CARE.

The Department will make meaningful reasonable attempts, both verbally and in writing, to inform in priority order, individuals identified below of the potential imminent placement and the requirements for consideration as a placement resource. The Department will place children in a safe and trusted environment consistent with the best interest and special needs of the children as required by P.L.96-272, Section 475(5). Ideally, placement priority will be given in the following order: (a) Immediate family; (b) Extended family members; (c) Non-family members with a significant established relationship with the child; (d) other licensed foster parent(s). Upon immediate contact with persons in categories a) through d) above, and after preliminary screening, within seventy-two (72) hours of decision to place, Departmental staff will make reasonable attempts to inform immediate family members of the way to

become a placement resource. Alternate care placement will in all cases include consideration of: (5-8-09)

01. Family Assessment. The family assessment conducted in accordance with the provisions of the ~~FACS CFS Practice Manual Standards.~~ (3-30-07)()

02. Ability of Providers. The ability of potential alternate care providers to address and be sensitive to the unique and individual needs of the child and ability to comply and support the plan for the child and their family. (3-18-99)

03. Family Involvement. The involvement of the family in planning and selecting the placement. The Department will use a family unity meeting concept making reasonable efforts to gather immediate and extended family members and other significant supporters to identify family strengths relevant to creating a safe environment for the child. This process will be fully reported to the court along with resulting plans and commitments. (5-8-09)

402. INVOLUNTARY PLACEMENT OF INDIAN CHILDREN.

Involuntary placement of an Indian child in foster care must be based upon clear and convincing evidence, including information from qualified expert witnesses, that the continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child. ~~Foster care placement must be in the least restrictive setting that most approximates a family and in which any special needs may be met.~~ In the absence of good cause to the contrary, a preference must be given to placement with: (5-8-09)()

01. Extended Family. A member of the Indian child's extended family; (3-18-99)

02. Foster Home Approved by Tribe. A foster home licensed; ~~or approved, or specified~~ by the Indian child's tribe; (3-18-99)()

03. Licensed Indian Foster Home. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (3-18-99)

04. Indian Institution. An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs. (3-18-99)

(BREAK IN CONTINUITY OF SECTIONS)

~~435. PERIODIC REVIEW OF BENEFITS FROM BUREAU OF INDIAN AFFAIRS (BIA). RESERVED~~
~~Field offices must contact the Bureau of Indian Affairs and review periodically benefits that may be available to children in foster care.~~ (3-18-99)

(BREAK IN CONTINUITY OF SECTIONS)

480. ALTERNATE CARE LICENSURE.

All private homes and facilities providing care for children under these rules must be licensed in accordance with IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," unless foster care placement of an Indian child is made with a foster home licensed; ~~or approved or specified~~ by the Indian child's tribe, or an institution for children approved by an Indian tribe or operated by an Indian organization. (3-30-07)()

(BREAK IN CONTINUITY OF SECTIONS)

556. REPORTS INVOLVING INDIAN CHILDREN.

Possible abuse, neglect, or abandonment of a child who is known or ~~suspected~~ **believed** to be Indian will be reported

to appropriate tribal authorities immediately. If the reported incident occurs off a reservation, the Department will perform the investigation. The Department will also investigate incidents reported on a reservation if requested to do so by appropriate authorities of the tribe. A record of any response will be maintained in the case record and written documentation will be provided to the appropriate tribal authorities. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

559. CHILD PROTECTION SAFETY AND COMPREHENSIVE ASSESSMENTS.

The Department's safety and comprehensive assessments must be conducted in a standardized format and must utilize statewide assessment and multi-disciplinary team protocols. The assessment must include contact with the child(ren) involved and the immediate family and a records check for history with respect to child protection issues. (4-7-11)

01. Interview of a Child. The interview of a child concerning a child protection report must be conducted: (3-30-07)

a. In a manner that protects all children involved from undergoing any unnecessary traumatic experience, including multiple interviews; (3-30-07)

b. By a professional with specialized training in using techniques that consider the natural communication modes and developmental stages of children; and (3-18-99)

c. In a neutral, non-threatening environment, such as a specially equipped interview room, if available. (3-18-99)

02. Interview of Family. Interview of the child's immediate family is mandatory in every case and may require the participation of law enforcement. The family services worker conducting the interview must: (3-30-07)

a. Immediately notify the parent(s) or legal guardian(s) being interviewed of the purpose and nature of the assessment. At the initial contact with family, the name and work phone numbers of the family services worker and his supervisor must be given to ensure the family has a contact for questions and concerns that may arise following the visit; (3-30-07)

b. Determine Inquire if the family is of Indian, or has Indian heritage, for the purposes of ICWA; (3-18-99)()

c. Interview siblings who are identified as being at risk; and (3-18-99)

d. Not divulge the name of the person making the report of child abuse or neglect. (3-30-07)

03. Collateral Interviews. Any assessment of an abuse or neglect report must include at least one (1) collateral interview with a person who is familiar with the circumstances of the child or children involved. Collateral interviews will be conducted with discretion and preferably with the parent(s)' or legal guardian(s)' permission. (3-30-07)

04. Completion of a Comprehensive Assessment. A Safety Assessment will be completed on each referral assigned for assessment of abuse or neglect, or both. When safety threats are identified in the safety assessment and the case remains open for services, a comprehensive assessment must be completed. (4-7-11)

05. Role of Law Enforcement. Section 16-1625, Idaho Code, specifies that the Department may enlist the cooperation of peace officers for phases of the safety assessment for which they have the expertise and responsibility and consistent with the relevant multidisciplinary team protocol. Such areas include: (3-30-07)

- a. Interviewing the alleged perpetrator; (3-18-99)
 - b. Removing the alleged perpetrator from the child's home in accordance with Section 39-6301, Idaho Code, the "Domestic Violence Act"; and (3-18-99)
 - c. Taking a child into custody in accordance with Section 16-1612, Idaho Code, where a child is endangered and prompt removal from his or her surroundings is necessary to prevent serious physical or mental injury. (3-18-99)
- 06. Notification of the Person Who Made the Referral.** The Department must notify the person who made the child protection referral when the safety assessment has been completed. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

710. FAMILY HISTORY.

If the family case plan is termination of parental rights and adoption is considered a part of the total planning for the child, the following information will be obtained and placed in the child's permanent adoption record: (5-8-09)

- 01. Informational Forms.** Informational background forms regarding the birth mother, birth father, and the child. (3-18-99)
- 02. Hospital Records.** Hospital birth records on child. (3-18-99)
- 03. Evaluations/Assessments.** Evaluations/Assessments previously completed on child. (3-18-99)
- 04. Current Picture.** Current picture of child. (3-18-99)
- 05. Narrative Social History.** Child and family's narrative social history that addresses: (5-8-09)
 - a. Family dynamics and history; (3-18-99)
 - b. Child's current functioning and behaviors; (3-18-99)
 - c. Interests, talents, abilities, strengths; (3-18-99)
 - d. Child's cultural and racial identity needs. The ability to meet the cultural and racial needs of the child does not necessitate a family have the same culture or race as the child; (3-18-99)
 - e. Life story, moves, reasons, key people; (3-18-99)
 - f. Child's attachments to current caretakers, siblings and significant others; i.e., special friends, teachers, etc.; (3-18-99)
 - g. Medical, developmental and educational needs; (3-18-99)
 - h. Child's history, past experiences, and previous trauma; (3-18-99)
 - ~~i. Indian child's membership or eligibility for membership in tribe(s); (3-18-99)~~
 - ~~ji. Membership or eligibility for membership in, and social and cultural contacts with, parent's tribe(s) of parent(s), if any, including names and addresses of extended family and membership in tribe(s); (3-18-99)()~~
 - ~~kj. Indian child's contacts with tribe(s) Indian ancestry; (3-18-99)()~~

- ~~k.~~ Individualized recommendations regarding each child's need for permanency; and (3-18-99)
- ~~m.~~ Reasons for requesting termination of parental rights. (3-18-99)

(BREAK IN CONTINUITY OF SECTIONS)

721. REPORT TO THE COURT -- INVOLUNTARY TERMINATION.

If a petition for an involuntary termination of parental rights has been brought before the Magistrate Court, an investigation or report to the court under the Termination Act is required. If the petition has been filed by the Department, a report is required under Section 16-2008(b), Idaho Code. Reports submitted under the Termination Act based on an involuntary termination of parental rights must include: (5-8-09)

- 01. Allegations.** The allegations contained in the petition. (3-30-01)
- 02. Investigation.** The process of the assessment and investigation. (3-30-01)
- 03. Family Circumstances.** The present condition of the child and parent(s), especially the circumstances of the parent(s) whose rights are being terminated and contact with the parent(s) of a minor parent, unless lack of contact is explained. (5-3-03)
- 04. Medical Information.** The information forms regarding the child, birth mother, and birth father will be submitted with the Report to the Court. Reasonably known or available medical and genetic information regarding both birth parents and source of such information, as well as reasonably known or available providers of medical care and services to the birth parents. (5-8-09)
- 05. Efforts to Maintain Family.** Other facts that pertain to the parent and child relationship including what reasonable efforts have been made to keep the child with the family, or what active efforts to prevent the breakup of the Indian family have been made. ~~(3-30-01)~~(____)
- 06. Absent Parent.** Reasonable efforts made by the petitioner to locate an absent parent(s) and provision of notification to an unmarried father of the paternity registry requirement under Section 16-1513, Idaho Code. (5-8-09)
- 07. Planning.** Proposed plans for the child consistent with: (3-30-01)
- a.** The Indian Child Welfare Act, including potential for placement with the Indian child's extended family, other members of the Indian child's tribe, or other Indian families; and (3-30-01)
- b.** The Adoption and Safe Families Act of 1997, which prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family, and requires individualized documentation regarding the child's needs in permanent placement. (4-7-11)
- 08. Compliance with the Indian Child Welfare Act.** Documentation of compliance with the Indian Child Welfare Act, including identification of whether the child is Indian and if so: (3-30-01)
- a.** Notification of the pending proceedings ~~by registered mail with return receipt requested,~~ to the parent(s) or Indian custodian(s) and the Indian child's tribe, or to the Secretary of the Interior if their identity or location ~~cannot be determined~~ is unknown according to Section 051 of these rules; ~~(5-3-03)~~(____)
- b.** Notification of the right of the parent(s) or Indian custodian(s), and the Indian child's tribe, to intervene in the proceeding and their right to be granted up to twenty (20) additional days to prepare for the proceeding; (5-3-03)
- c.** Notification that if the court determines indigency, the parent(s) or Indian custodian(s) have the

right to court-appointed counsel; (5-8-09)

d. Evidence, including identity and qualifications of expert witnesses, that continued custody of the child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child; (5-3-03)

e09. Termination of Parent-Child Relationship. ()

a. A recommendation and the reasons *therefor as to* whether or not termination of the parent and child relationship is in the best interest of the child; and (3-30-01)()

b. Upon the court's written decision to terminate parental rights, two certified copies of the "Findings of Fact, Conclusions of Law and Decree" are to be placed in the child's permanent record. (3-30-01)()