

Placement Preferences and Standards (25 U.S.C. § 1915; Cal. Rules of Court, rule 1439(k))

The following order of preference must be followed in all foster care and adoptive placement, absent good cause to the contrary. Placement standards must be the prevailing social and cultural standards of the Indian community in which the parent or extended family member resides, or with which the parent or extended family member maintains social and cultural contacts. The preferences and wishes of the Indian child and the parent must be considered, and weight must be given to a consenting parent's request for anonymity. The tribe, by resolution, may establish a different preference order, which must be followed if it provides for the least restrictive setting. An Indian child may be placed in a non-Indian home only if the court finds that a diligent search has failed to locate a suitable Indian home. A record of each placement of an Indian child must be maintained by the state.

Foster or Preadoptive Placements: Must be in the least restrictive setting, within reasonable proximity to the Indian child's home, and capable of meeting any special needs of the Indian child. Placement preference must be given in the following order:

1. To a member of the Indian child's extended family;
2. To a foster home licensed or approved by the Indian child's tribe;
3. To a state or county licensed certified Indian foster home;
4. To a children's institution approved by the tribe or operated by an Indian organization and offering a program designed to meet the Indian child's needs.

Adoptive Placements: Preference must be given in the following order:

1. To a member of the Indian child's extended family;
2. To other members of the Indian child's tribe;
3. To other Indian families.

Good Cause to Deviate from the Placement Preferences (25 U.S.C. § 1915; Cal. Rules of Court, rule 1439(k))

The court may modify the preference order only for good cause, which may include the following considerations:

1. Requests of the parent or Indian custodian or Indian guardian;
2. Requests of the Indian child;
3. Extraordinary physical or emotional needs of the Indian child as established by a qualified expert witness; and
4. Unavailability of suitable families based on a diligent effort to identify families meeting the preference criteria.

The party requesting a different order has the burden of establishing good cause.

Examination of Reports and Documents (25 U.S.C. § 1912(c); Cal. Rules of Court, rule 1439(h))

The parent, Indian child, Indian custodian, and tribe, as well as their respective attorneys, have the right to examine all court documents related to the dependency case.

Full Faith and Credit (25 U.S.C. § 1911(d))

Full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe is required.

Adoption (25 U.S.C. §§ 1917, 1951; Cal. Rules of Court, rule 1439(p))

The court must provide the Secretary of the Interior with a copy of any final decree or order in any Indian child adoptive placement, including:

1. Name and tribal affiliation of the child;
2. Names and addresses of the biological parents;
3. Names and addresses of the adoptive parents;
4. Identity of any agency having files or information relating to such adoptive placement; and
5. Any confidential parent affidavits.

At the request of an adopted Indian child over age 18, the adoptive or foster parents, or the tribe, the Secretary must disclose information necessary for purposes of enrollment or any rights or benefits associated with membership in the tribe. If the documents contain a confidential parent affidavit, the Secretary must certify to the tribe the information necessary for enrollment.

The court must provide information to any Indian individual, age 18 or older, who was the subject of an adoptive placement, of the individual's tribal affiliation, biological parents, and other information as may be necessary to protect any rights flowing from the individual's relationship to the tribe. Forms ADOPT - 225 & 226 are required for voluntary adoptions.

Jurisdiction and Transfer (25 U.S.C. § 1911(a); Cal. Rules of Court, rule 1439(c))

Exclusive Jurisdiction: If the Indian child resides or is domiciled on a reservation that exercises exclusive jurisdiction, the petition must be dismissed.

Concurrent Jurisdiction: If the Indian child is not domiciled or residing on a reservation that exercises exclusive jurisdiction, the tribe, parent, or Indian custodian may petition the court to transfer the proceedings to the tribal jurisdiction. The court must transfer the proceedings unless there is good cause not to do so. Either parent may object to the transfer, or the tribe may decline the transfer of the proceedings. If the tribe does not request transfer, the juvenile court retains jurisdiction and must comply with ICWA.

Invalidate Proceedings (25 U.S.C. § 1914)

If it is determined that ICWA applies, the Indian child, a parent, an Indian custodian, or the child's tribe may petition any court of competent jurisdiction to invalidate the proceedings based on one of the following violations: jurisdiction; notice; appointment of counsel; examination of reports or other documents; active efforts; foster care placement standards and findings to support such orders; termination of parental rights standards and findings to support such orders; and standards for voluntary termination.