

ACTIVE EFFORTS PRINCIPLES AND EXPECTATIONS



Oregon Tribes
Oregon Judicial Department Citizen Review Board
Oregon Department of Human Services



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PRINCIPLES

AND EXPECTATIONS

This publication is the result of a true collaboration between the Oregon Judicial Department Citizen Review Board, the Department of Human Services, and the nine federally recognized Oregon tribes: the Burns Paiute Tribe, the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Coquille Indian Tribe, the Cow Creek Band of Umpqua Indians, the Confederated Tribes of Grand Ronde, the Klamath Tribes, the Confederated Tribes of Siletz, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes of Warm Springs. Additionally, Judicial Officers from all over the State of Oregon provided valuable insight, review, and input into the creation of this document.

We sincerely thank everyone involved in developing this material, and for their unwavering commitment and dedication to the children and families of Oregon.

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CREATION AND PURPOSE OF THIS DOCUMENT

This document was developed in consultation with the federally recognized Tribes of Oregon by the Department of Human Services (DHS) and the Citizen Review Board (CRB). The Indian Child Welfare Act (ICWA) mandates that DHS make active efforts to provide remedial and rehabilitative services to the family before the removal of an Indian child from his or her parent or Indian custodian, except to prevent imminent damage or harm to the child and to reunify an Indian child with his or her parent or Indian custodian.¹ DHS, the Judicial Department and Oregon's nine recognized Tribes came together to create this tool to implement the active efforts mandate of the ICWA. We seek to better serve Indian children and their families through improved collaboration between the State of Oregon and the Tribes.

The following guidelines are offered for use by courts, DHS staff and local CRBs in evaluating whether active efforts have been made in ICWA cases.



¹ 25 USC § 1911 (d); 25 USC § 1922



Both ICWA and Oregon law require that any party seeking to remove an Indian child from his or her home must establish that remedial or rehabilitative services were provided to the family to avoid removal of the child.² This means that DHS must make active efforts to provide services subsequent to a CPS investigation and before a decision is made to place an Indian child out of the home.³ This does not supersede the need for emergency removal to prevent imminent physical damage or harm to a child.⁴ Case records should document factual evidence that the conduct or condition of the parent(s) and/or custodian will result in serious physical or emotional harm to the child, and that efforts were made to counsel and change the parent's harmful behavior and these efforts did not work.⁵ The services offered must demonstrate that prior to petitioning the court for removal of an Indian child, active efforts were made to alleviate the need for removing the child.

While active efforts to provide services to prevent the removal of an Indian child are required in all eligible cases, this document directly applies to the active efforts requirement to provide services to allow a child to safely return home **after** they have been placed in substitute care. Nothing in this document is meant to imply that DHS is not also required to make active efforts prior to the placement of an Indian child.

The Adoption and Safe Families Act (ASFA) does not supersede the Indian Child Welfare Act. The ICWA has not been modified, limited, or diminished by the ASFA. States are still required to comply with the mandates of the ICWA and ASFA.

The document is to be used as a training tool and a guideline for agency staff, courts and review board members to use in making active efforts findings. This document should not be read as a definition of active efforts.

² 25 USC § 1911 (d); ORS 419B.185(1)(a); ORS 419B.340

³ OAR 413-070-0160

⁴ 25 USC § 1922; OAR 413-070-0150

⁵ OAR 413-070-0190

GOALS

Every effort made with an Indian child and family will be measured against these goals:

- Commitment to the requirements and the spirit of the Indian Child Welfare Act;
- Early contact with and active engagement of the child's tribe. Active efforts does not require or imply agreement on case issues but does create an expectation that the agency and tribes will work closely together in an atmosphere of mutual respect and honesty to achieve understanding;
- A more vigorous and higher level of effort than those that typically constitute reasonable efforts. Casework which goes beyond:
 - referring for services to arranging services, and helping families engage in those services;
 - managing a case to proactively engaging in diligent casework activity; and
 - meeting the minimum requirements set by policy to creatively meeting the needs of children and families.
- Using methods and providing services that are culturally appropriate.

APPLICATION

The Active Efforts Principles and Expectations outlined in this document apply to the federal and state requirements that DHS must make active efforts to “make it possible for the child to safely return home” in each case determined to be ICWA eligible. If it is yet to be determined by a tribe whether a child is eligible for membership, according to Oregon law, when a court conducts a hearing, the court shall inquire whether a child is an Indian child subject to the Indian Child Welfare Act .⁶ If the court knows or has reason to know that an Indian child is involved, the court shall enter

⁶ ORS 419B.878

an order requiring DHS to notify the Indian child's tribe of the pending proceedings and of the tribe's right to intervene and shall enter an order that the case be treated as an Indian Child Welfare Act case until such time as the court determines that the case is not an Indian Child Welfare Act case. The court's determination that a case is or is not an Indian Child Welfare case will be based on information provided by a Tribe.⁷

Only the services and activities that affect the reunification plan are the services/activities to be evaluated in determining whether active efforts have been made. The adequacy of services will be judged by their appropriateness in addressing the needs that caused the child(ren) to be removed from the home.

This active efforts standard applies to the DHS obligation to provide reunification services to the eligible Indian child and his or her parents or Indian custodians. Oregon law requires that allegations be filed in regard to all legal parents and guardians before the court can assume jurisdiction.⁸ The ICWA requires DHS to provide services and make efforts with biological parents or Indian custodians.

In addition, since the federal and state law mandate that DHS must make active efforts “to make it possible for the child to safely return home,” services will be made available to all other household members who will be in a caretaker role with the child, whether they have custodial or parental rights or not, since this is the “home” to which the child will be returned.

⁷ OAR 413-070-0170(4); see also Bureau of Indian Affairs Guidelines for State Courts, 44 Fed. Reg. 67568 (1979)

⁸ ORS 419B.100

PRINCIPLES

The cornerstone of active efforts is active and early participation and consultation with the child's tribe in all case planning decisions.⁹ Each tribe has its own expectations for active efforts. The facts of each case dictate the level of active efforts required.

DHS should inquire about the applicability of the Indian Child Welfare Act immediately upon a child being taken into protective custody.¹⁰ These efforts must be documented. If the information is not available at that time, on-going inquiries need to be made as the case progresses and more information becomes available.

Active efforts cannot be excused under state law definitions for aggravated circumstances or extreme conduct.¹¹ The health and safety of the child are of paramount concern in every case.¹² In some cases, the return of the child to the biological parent or Indian custodian may result in serious physical or emotional damage to the child.¹³ However, every case must receive active efforts, which should include at a minimum, a diligent assessment of the reasons for removal of the child, the risk for further harm of the child, and the ability of the parent or Indian custodian to safely care for the child. Consultation with the Indian child's tribe is critical to determining what and how active efforts should be provided.¹⁴

Active efforts determinations apply to the entire time period covered by the CRB or court review. DHS is obligated to make active efforts throughout the review period or until the plan changes to something other than return to parent. Findings will be made based on the timeliness and appropriateness of the services offered. This active efforts finding may be made for any part of a review period in which the goal is Return to Parent.¹⁵

In all ICWA cases, prior to the adjudication of the petition, DHS is obligated to provide active efforts to offer services to make it possible for the child to safely return home.¹⁶ The parents' or Indian custodians' obligation to participate begins when the court makes a finding on the allegations of abuse/neglect and takes jurisdiction. For example, if an adjudication of a petition is delayed because a criminal matter is pending, DHS has the obligation to offer services to the parents or Indian custodians even though the parents or Indian custodians may choose not to engage in services. When parents or Indian custodians agree to participate in services prior to adjudication of the petition, an active efforts finding will be based on the services provided. When the parents or Indian custodians refuse to participate prior to adjudication, the active efforts finding will be based on the offer of services. Consultation with the tribe is important in these circumstances. Efforts to engage the child's tribe should be documented.

⁹ OAR 413-070-0160(2)

¹⁰ OAR 413-070-0150; OAR 413-070-0170

¹¹ ORS 419B.340(5); ORS 419B.502

¹² See, e.g., 419B.340(1); ORS 419B.476(2)(a) & (4)(a)

¹³ OAR 413-070-0190

¹⁴ OAR 413-070-0160(2)

¹⁵ ORS 419A.116(2); ORS 419B.476(4)

¹⁶ ORS 419B.185; 419B.340(1)



If DHS has made the effort to provide a service and another person or entity has not fulfilled their responsibility to provide the service, the active efforts finding should be made based on DHS's effort to provide the service in a more creative manner. For example, if DHS has referred a parent or Indian custodian to parent training and a waiting list has kept the parents or Indian custodian out of the class, DHS, in spite of the failure of the other person or entity, should make active efforts to find another class, contract with a provider to make the service available, or use some other effective method to make the service available to the parents or Indian custodian.

Utilizing Family Decision models (FDM), or other culturally-relevant approaches, for case planning creates unique family specific service plans. These plans often specify certain tasks to be done by family members. If those tasks directly affect the reunification and a family member has not completed the task, DHS will actively assist and support the family in completing the task and document all efforts to do so.

Given that a child's health and safety are the paramount concerns, DHS has an obligation, in consultation with the child's tribe, to offer relevant services to all members of the household who will have responsibility to provide care for the child even if the person does not have legal rights to the child. If any household member refuses to participate in services offered, the active efforts finding will be made on the offer of services. The child's tribe should be kept informed of the status of the case on an on-going basis regardless of whether the child's tribe chooses to intervene or not.

In making active efforts to reunify families, if services needed are not readily accessible, DHS will make active efforts to develop, modify, and coordinate services that will address the conditions and circumstances that are the basis for juvenile court jurisdiction. Access to cultural and tribal services and frequent face-to-face contact between the worker and the child and family need to occur.

Documentation of all casework activity is important. While this document specifically mentions documentation in certain areas, the best course of action is to document all casework done to achieve a positive active efforts finding.

EXPECTATIONS

There are required steps that must be taken to determine whether or not a child is Indian as defined under the ICWA when in protective custody. Workers must follow the procedures outlined in OAR 413-070-0160 & OAR 413-070-170 and document such steps, in an expeditious manner. Proper notification to the child's tribe is required and must be documented. The caseworker is expected to maintain on-going and frequent contact with the child's tribe.

The following is a list of expected activities in the first six months of a typical case. An effort has been made to place the activities in chronological order beginning with expectations/activities that occur at or before placement and progressing through the 30 day and 60 day points in the life of the case. Some activities are on-going. This format is intended for the convenience of the reader only.

- A. All legal parties must be identified early in the case. Petitions shall include allegations in regard to all persons having parental or custodial rights to the child. Case plans shall bear a rational relationship to the jurisdictional findings of the court and shall be designed to resolve the issues that prompted the court to take jurisdiction and remove the child from the parents' or Indian custodian's home.¹⁷
- B. A DHS Form 1270 shall be completed by all persons with custodial or parental rights to a child. Relatives shall also be asked about Indian ancestry if one or both parents are unavailable or unwilling to provide the needed information.¹⁸ If any indication of Indian ancestry is made, a diligent search for the child's tribal affiliation shall be done immediately. If a specific tribe has been named, the child's tribe should be contacted within 24 hours. Document efforts made to contact the child's tribe(s).
- C. In order to retain an Indian child in foster care, the court must make a determination supported by clear and convincing evidence, including the testimony of an expert witness, or witnesses, that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical injury to the child.¹⁹ A higher standard of proof is also required at termination of parental rights hearings.²⁰ The child's tribe should be consulted as to the selection of the expert witness. If the child's tribe does not respond, efforts to engage the child's tribe should be documented.

¹⁷ ORS 419B.343(1)(a)

¹⁸ OAR 413-070-0170

¹⁹ 25 USC § 1912(e); OAR 413-070-0200(1)

²⁰ 25 USC § 1912(f); OAR 413-070-0200(2)

- D. Absent parent searches shall be conducted and documented in a timely manner, beginning as soon after placement as possible.
- E. All tribal or ICWA placement preferences shall be followed unless documented good cause to the contrary exists.²¹ Every effort shall be made to locate relatives and to support utilization of relative placements. Consultation with the child's tribe is critical but does not, in and of itself, meet the requirements for a diligent search. Efforts should be clearly documented in the case record.
- F. Assessments and services need to be provided in the client's primary language.

- G. DHS shall consider the use of a family decision meeting in each case in which a child is placed in substitute care.²² When DHS determines that the use of a family decision meeting is appropriate the meeting shall be held, whenever possible, before the child has been in substitute care for 60 days.²³ The child's tribe should be engaged in this process by receiving notice and by being consulted to determine other potential invitees to the FDM. If DHS elects not to conduct a family decision-making meeting, the reasons for that decision shall be clearly documented in the written case plan of the child.²⁴ If a meeting is held, DHS shall incorporate the family plan developed at the family decision-making meeting into the DHS case plan for the child to the extent that the family plan protects the child, builds on family strengths and is focused on achieving permanency for the child within a reasonable time.²⁵ If the family plan is not incorporated into the DHS case plan for the child, the worker shall document the reasons in the case plan.²⁶

- H. Initial service plans and visitation plans should be developed in conjunction with the tribe. The initial service plans shall be written within 60 days of the placement and should include a written visitation plan. Frequent contact among the child, parents, and siblings is imperative to maintain cultural and family ties; unless there is a safety risk or threat of harm to the child.



²¹ 25 USC § 1915; OAR 413-070-0220(3) & (4)

²² ORS 417.365 to ORS 417.375

²³ ORS 417.368(2)

²⁴ ORS 417.368(3)

²⁵ ORS 417.375(3)

²⁶ ORS 417.375(4)

- I. A service agreement or letter of expectation should be done in consultation with the child's tribe in every ICWA case. Consultation with the child's tribe and the tribe's recommendations for services should be documented in the case plan. Simply mailing the service agreement or a copy of the letter of expectation to the child's tribe will not be considered as active efforts; unless the child's tribe has not responded to diligent requests. Service referrals should be made immediately upon the entry of the court order or upon parents' agreement with the service agreement, whichever comes first. In order to achieve active efforts, workers should actively engage with families to help them connect to the services, including but not limited to, providing transportation to those services. Services must be culturally appropriate. **Mere referrals to, and monetary expenditures for, services will not constitute an active efforts finding.** The worker should check and document the status of service participation and progress and notify the child's tribe regularly.
- J. A culturally appropriate assessment of the child's treatment needs should be done within 60 days of the placement. DHS shall consult with the child's tribe in selecting the assessment resource; this is critical to ensure a culturally appropriate assessment. The case plan should include clear documentation of any assessment conducted by DHS.
- K. **The worker shall make and document efforts to expedite receipt of assessment results.** After consulting with the child's tribe, referrals to culturally appropriate services recommended by assessments and evaluations should be made, in best practice, as soon as possible. As with services to parents outlined in section "V.I.," workers shall actively engage the child in the services.
- L. In all child welfare cases managed by DHS, at a minimum the worker shall have face-to-face contact with the family, the child and the provider in accordance with DHS policy. **However, in ICWA cases, because active efforts involves intensive engagement with Indian children and their parents and/or Indian custodians, more frequent contact above and beyond the policy requirements is expected.** Documentation of the contact is required by policy.



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