



White Earth Reservation Tribal Council

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The White Earth Nation supports the proposed regulations and/or requests consideration of amendments to the proposed regulations under part 23 as suggested below.

- I. The White Earth Nation supports this provision and proposed changes to proposed rules.

§23.20 Definitions	The White Earth Nation supports this provision.
§23.11 Notice	The White Earth Nation supports this provision.
§23.101 Purpose	The White Earth Nation supports this provision.
§23.102 Terms to know	The White Earth Nation supports this provision.
§23.103 When does ICWA Apply	The White Earth Nation supports this provision.
§23.104 Contacting Tribes	The White Earth Nation supports this provision, but add requirement that State Department of Human Services maintain a list of contacts for the tribes in their state.
§23.105 Interaction with State Law	The White Earth Nation supports this provision.
§23.106 Active Efforts begins	The White Earth Nation supports this provision, but add language including voluntary cases.

§23.107 Action By Agency to Determine if child is and Indian child. The White Earth Nation supports this provision. The substance of the Rule but change the heading reflect that it is the **Indian child's Tribe**, not the court that determines membership.

§23.108 Determination of Tribal membership. The White Earth Nation supports this provision.

§23.109 Determining child's tribe. Proposed Rule §23.109 states that ICWA require that the Indian tribe with the most significant contacts be designated as the child's tribe. We do not agree with this interpretation of the Indian Child Welfare Act and ask that the Rules specifically allow for all tribes the child may be eligible for membership in to be allowed to participate in the proceedings.

We ask this for three reasons, first the concept of enrollment in only one federally recognized tribe is a federal ideal, not a tribal one. Indian children whose families were able to maintain their connections to their tribes through the relocation and assimilation eras often have close contacts with two or more tribes, but because of Federal requirements are allowed to only enroll in one tribe. The child and their family will usually benefit from the involvement of all of the tribes the child is considered a member of. Conversely, there are the children and families who have lost connections to their tribe. A positive benefit of involvement of the child welfare system should be the chance to connect with the tribes the family has lost contact with, and this should include all of the tribes the family has lost contact with. Third, not all tribes have the resources to participate in ICWA proceedings. Allowing all tribes where the Indian child is eligible for membership to participate helps increase the likelihood of tribal participation, of placement of the child with family or other tribal members, and in general of positive outcomes for Indian children in ICWA proceedings.

§23.110 When must a State court dismiss an action. The White Earth Nation supports this provision.

§23.111 Notice Requirements The White Earth Nation supports this provision.

§23.112 Time limits and extensions The White Earth Nation supports this provision.

§23.113 Emergency Removal Next we are concerned with the proposed requirement to obtain Qualified Expert Witness testimony within 30 days of emergency removal, §23.113(f). It is important that Qualified Expert Witness Testimony be provided by people who are truly knowledgeable about how that particular tribe raises its' children. It is equally

important that Indian children are safe and are not returned to unsafe environments because the Qualified Expert Witness Testimony was not obtained within 30 days. Whenever possible Qualified Expert Witness testimony should be provided from the Indian child(s) tribe, even where it may take longer than 30 days to obtain the testimony. Unfortunately, it is simply unrealistic to expect tribes to provide Qualified Expert Witness Testimony within 30 days of an emergency removal of a child. To bridge the gap, we suggest the following:

- 1) The rule should make clear that absent an emergency, a child cannot be removed from the home of their parents or Indian Custodian prior to the Qualified Expert Witness Testimony as part of clear and convincing evidence that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, has been presented to the court.
- 2) In the event that a child has been removed on an emergency basis, the rule should be amended to require the state social service agency to report to the court, within 30 days of the removal, the active efforts the social services agency has made to provide services and safety planning to allow the child to return to the home, as well as the state social services agency's active efforts to obtain qualified expert witness testimony and to engage the tribe in identifying, planning for and providing services for the family which may allow the child to remain in the home. Where active efforts have been demonstrated to the court the social services agency should be allowed up to an additional 60 days to obtain appropriate Qualified Expert Witness testimony.

§23.114 Improper Removal	The White Earth Nation supports this provision.
§23.115 Petitions for transfer	The White Earth Nation supports this provision.
§23.116 Ruling on transfer petition	The White Earth Nation supports this provision.
§23.117 Good Cause not to transfer	The White Earth Nation supports this provision.
§23.118 Transfer	The White Earth Nation supports this provision.
§23.119 Access to records	The White Earth Nation supports this provision.
§23.120 Steps a party must take to petition.	The White Earth Nation supports this provision.

§23.121 Applicable Standards	The White Earth Nation supports this provision.
§23.122 Qualified Expert Witness	The White Earth Nation supports this provision.
§23.123 Voluntary Proceedings	The White Earth Nation supports this provision.
§23.124 Obtaining Consent	The White Earth Nation supports this provision.
§23.125 Information contained in a consent document.	The White Earth Nation supports this provision.
§23.126 Withdrawal of Consent Foster Care	The White Earth Nation supports this provision.
§23.127 Withdrawal of Consent Adoption.	The White Earth Nation supports this provision.
§23.128 When do Placement Preferences Apply	The White Earth Nation supports this provision. It is in the best interests of the child to maintain or establish contact with their tribe. Even where anonymity is requested by the child's parent, the child's tribe should still be notified and potential placement with tribal members pursued.
§23.129 & §23.130 Placement preferences	The White Earth Nation supports this provision, but add language clarifying that the placement preferences are in descending order of preference.
§23.131 Good cause to depart from placement preferences.	The White Earth Nation supports this provision, but amend heading and add language clarifying that the placement preferences are in descending order of preference.
§23.132 & §23.133 Vacate Adoption	The White Earth Nation supports this provision.
§23.134 Rights of Adult Adoptees	Sealed adoption records, at their very nature, are culturally inappropriate and make it difficult for adoptees to fully connect with their extended families, clan and culture. At times these provisions also make it difficult for adoptees to fully exercise their rights to participate in reparation programs and their rights to be recognized as Indians. Adoptees should be able to fully return to all of the family and culture resources of their tribes. We ask that the language in section §23.134 be amended to include provisions to require release of necessary information so that adoptees fully participate in their tribal families and cultures.

§23.135 Notice of change in child's status The White Earth Nation supports this provision.

§23.136 Information shared with Bureau of Indian Affairs The White Earth Nation supports this provision.

§23.137 Maintain State Records The White Earth Nation supports this provision.

§23.138 Paperwork reduction act The White Earth Nation supports this provision.

II. Request to address subjects not addressed in the proposed rules.


- 1) The White Earth Band of Ojibwe, as do many tribes and families, exhausts significant resources advocating and litigating for effective application of the ICWA across the United States. The need for extensive advocacy and litigation is the often result of intentional failure on the part of the county to comply with ICWA. Under the current ICWA, the only relief mechanism available to tribes and families when a state has not complied with the ICWA is to invalidate proceedings. The White Earth Band of Ojibwe is committed to ensuring effective application of ICWA. However, we would much rather focus our time, financial and emotional resources on our children and families rather than continue to squander them trying to force social service agencies and guardian ad litem to comply with a law they are voluntarily choosing not to follow. The proposed rule does not address consequences for non-compliance. Stronger consequences for non-compliance need to be imposed.

The White Earth Band of Ojibwe asks that enforcement of the ICWA be strengthened by adding provisions to allow Indian tribes and families to recover litigation expenses when a County, State, or Guardian ad Litem has knowingly failed to follow the ICWA. Allowing tribes to recover litigation expenses will allow them to be present in court to advocate for

proper application of ICWA for more of their families. Reduced litigation expenses also means more money for tribes to spend on services and programs for their families to ensure that Indian children are raised in a good way. Finally, we ask that the ICWA be further strengthened by requiring monitoring of ICWA compliance at the state and federal level with related consequences to Title IV-E and other state and federal reimbursement programs.

- 2) the White Earth Band of Ojibwe was disappointed to learn that there are Adoption Attorneys claiming that the proposed regulations ignore the best interests of the Indian child by disallowing testimony regarding bonding and attachment. That is simply untrue. Far too often Indian tribes have lost children after intervening in proceedings at a late stage due to deficient or complete lack of notice of the proceedings, or because of lack of active efforts in locating and assisting appropriate relatives and tribal members in becoming viable placement options for the Indian child. The guidelines and the proposed rules do not ignore the best interests of the Indian child, they identify the best interests of the Indian child by requiring early identification of the tribe and active efforts to engage the tribe as early as possible in the proceedings. This measure alone will significantly improve tribal involvement in proceedings and placement of children with their families or other tribal members.

Respectfully,


Erma J. Vizenor
Chairwoman