

Sac and Fox Nation

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May 14, 2015

Elizabeth Appel
Office of Regulatory Affairs and Collaborative Action
U.S. Department of Interior
1849 C Street NW.,
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SUBMITTED: BY ELECTRONIC SUBMISSION

Re: *Proposed Rule, Regulations for State Courts and Agencies in Indian Child Custody Proceedings*, regarding 25 CFR 23; Docket ID: BIA-2014-0001 DR.5b711.1A000814

Dear Ms. Appel:


We represent Sac and Fox Nation, a federally recognized Indian Nation, located in Stroud, Oklahoma and are submitting this comment letter on its behalf in response to the Department of Interior, Bureau of Indian Affairs ("BIA") proposed rule: *Regulations for State Courts and Agencies in Indian Child Custody Proceedings*, for the comment period which was opened until May 19, 2015. The Sac and Fox Nation has a particular interest in the Proposed Regulations as they directly affect the children who are either members or eligible for membership in our Nation directly and through the states in which they reside.

As a Nation headquartered in Central Oklahoma, the issuance of these regulations is of significant importance to us specifically in light of the new Oklahoma Court of Civil Appeals Case *In the Matter of MKT, CDT and SAW* docket number 113,110 (May 1, 2015). This decision demonstrated how easily a court may disregard ICWA and placement regulations because of "Bonding" and the court's perceived best interest of the child. This case presents a powerful spotlight on the continuing problem facing Indian parents, children and Tribes in asserting their rights under the ICWA and more fundamentally their right to self-determination and ability to continue as a people and tribes. The removal and placement of children outside of the preferences is simply another way to terminate the tribes in a not as direct but none the less efficient manner. We applaud the fact that the new regulations are specifically addressing the argument of "existing Indian Family exception" that states if the child wasn't in an Indian family when

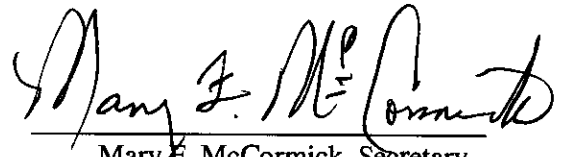
removed then there is no need to reunite with the tribe and prohibits any analysis based on the degree of Indian blood a child possesses.

After thorough consideration of the proposed regulations, the Sac and Fox Nation is pleased to express its full support for these regulations; they will add both consistency and clarity to the application and requirements of the Indian Child Welfare laws and procedures. Having legally binding guidelines is a good way to promote this compliance and stability as they cannot be ignored as not legally binding. We thank the BIA for their work in this matter and hope that the comments below are both helpful and considered in any final decisions. After reviewing these regulations, in the light of our needs, procedures and cultural desires, we are asking for consideration of the issues contained in the chart below on these proposed regulations.

Sincerely -



George Thurman, Principle Chief
Sac and Fox Nation



Mary F. McCormick, Secretary
Sac and Fox Nation

<u>Proposed Rule Number</u>	<u>Specific Item At Issue</u>	<u>Suggested Changes or Actions</u>
23.2 – Definitions	Active Efforts Definition	<p>The Sac and Fox Nation is very supportive of this definition and the clarity that it provides. We would like to see some provision or language added to this provision to require “documentation” of the active efforts produced by the state which could be reviewed by interested Indian Nations.</p> <p>Also, in section (4) the Sac and Fox Nation would encourage language be added to identify the appropriate time frame for Notifying the Indian Tribe with the ability to participate. This would ensure that Tribal Nations would get sufficient notice to not only attend the hearings or proceedings but also to prepare, gather information, request documents and resources if they are</p>

		needed. Furthermore, we would advocate that since this is the only provision dealing directly with the Indian Nation's themselves that something be added to include a consultation or meaningful discussion with the Tribal Nation's which are interested in the matter.
23.2 – Definitions	Addition of Definition for Tribal Representative	A definition of "Tribal Representative" would be a helpful addition to these regulations for both clarity and firm application. The Sac and Fox Nation would like to see the definition include "Tribal Representative – a person or persons designated by a specific Tribal Nation to participate in consultation, hearings, proceedings, provide expert testimony, and provide the recommendations of the tribe on all matters, including those that are cultural or tradition based, in all aspects of the court proceedings. Each Tribal Nation could then provide the names of the Tribal Representative(s) along with the contract information they have on file to make sure the appropriate persons are being notified.
23.107(b)	Actions Necessary in order to determine whether a child is an Indian Child	The Sac and Fox Nation Supports this definition but has some issues with the phrasing that a court "may wish" to consider certain items for the certification of the parties involved. The Nation believes this provision is both necessary and needs to be implemented in a way to provide consistency and stability in all proceedings across the board. To that end, the Sac and Fox Nation would like to see the provision be mandatory (MUST include) instead of permissive.
23.109 (c) – Procedure for Determining a Child's Indian Tribe	The procedure for determining the Indian Child's Tribe inherently prohibits other interested Nations from Participation.	The Sac and Fox Nation believes in the spirit of the law and the balance required for both the procedural and legal aspects of these cases. However, it is our belief that should a child, who may elect to be a member of our Nation one day, be

		<p>involved in a hearing that all the Indian Nations with interest in that child should be allowed to participate instead of a court determining which Nation has the most connection to the child. We strongly suggest that the BIA consider altering these regulations to allow for the participation on multiple interested Indian Nations.</p> <p>In a state where there are a large number of Indian Nations in close proximity, the chance of many Nations being interested and having connections to a particular Indian Child is both likely and foreseeable. The Sac and Fox Nation feels that excluding other interested nations because a court determines that one has a more meaningful connection may not be in the best interest of the Indian Child or the interested Nations.</p>
23.113(i)	Alternative Participation of Families and Tribes	<p>The Sac and Fox Nation is fully in support of the spirit behind this regulation and its intention. Because it is sometimes very difficult for Tribes and Family members to participate in traditional hearings, we feel that alternatives should be provided when available in a mandatory capacity instead of simply a permissive capacity. As such, we would like “should allow” to be changed to “must allow”. Altering this definition would also allow for the Tribes and Native Family Members to expect consistency and stability in all courts with all judges.</p>
23.115(d)	Alternative Participation of Families and Tribes	<p>As stated above, for both consistency and stability in an area where Families and Tribes cannot always participate through the well-established court proceedings, the Sac and Fox Nation asks that alternatives be made mandatory, when available, instead of simply permissive. As such, we would like “should allow” to be changed to “must allow”.</p>

23.123 Voluntary Proceedings	(a) agencies and State courts must ask whether a child is an Indian Child under the act...	<p>The phrasing of this section is ambiguous as to what “ask” actually means. The Sac and Fox Nation would prefer that this be clarified to require that “active efforts” be taken during these proceedings to determine if the child is an Indian Child or not.</p> <p>With that being said, the Sac and Fox Nation fully supports the addition of the Voluntary Placement Notification and actions addition as a measure to ensure that all situations involving eligible tribal members who are Indian Children are covered.</p>
23.128 Placement Preferences	Placement Preferences	<p>The Sac and Fox Nation would like to extend its support of this provision to allow the Tribal Nations to adopt and file their own placement preferences to allow flexibility in maintaining the traditions and customs of the Indian Nations.</p>
23.131(c)(3)	Good Cause Deviation	<p>It is the position of the Sac and Fox Nation that it should be made explicit in this section that good cause to depart from the placement preferences does NOT include ordinary bonding issue. This use of “bonding” as an exception to following the placement preferences rewards those that can avoid proper placement for as long as possible. It also may be more based upon State court perceptions and cultural preconceptions than on valid research or recognition of different cultural norms of Indian tribes. Bonding may be every bit as valid within Indian communities but more diffuse in that is spread out through the extended family or clan structure. This has specifically been a problem in Oklahoma due to the Court of Civil Appeals recent decision directly on this matter and the Nation feels that specific clarification would improve the consistency and application of the intended regulations.</p>
23.137 Records	State Maintained Records (a)	<p>This section specifically limits the viewing of records to the Indian Child’s</p>

		<p>Tribe. Because, by definition, that makes only one Nation able to get these records when a child may be eligible in any number of tribes. This is a concern as those tribes may want to request the child's records at a point in the future if the child applies for membership in that tribe. It would be more appropriate if all tribes for which the child is eligible could request these records from the State Agencies or Courts.</p>
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