



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Social and Health Services, Children's Administration

Permanent Rule Only

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose:

The department is making changes to match requirements in chapter 13.38 RCW, the Washington State Indian Child Welfare Act, and the federal Indian Child Welfare Act, 25 U.S.C. Chapter 21, as well as to reflect changes in Children's Administration (CA) policy. Currently, the WAC definition of Indian child as well as the application of the Local Indian Child Welfare Advisory Committee (LICWAC) processes in the WAC is contrary to state and federal law. Updates to each of these sections will harmonize the WAC sections with state and federal law.

Citation of existing rules affected by this order:

- Repealed: WAC 388-70-615
- Amended: WAC 388-70-091, WAC 388-70-092, WAC 388-70-093, WAC 388-70-095, WAC 388-70-450, WAC 388-70-600, WAC 388-70-610, WAC 388-70-620, WAC 388-70-630, WAC 388-70-640
- Suspended: None

Statutory authority for adoption: RCW 74.08.090

Other authority: Chapter 13.38 RCW, 25 U.S.C. Chapter 21

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 16-09-025 on April 12, 2016 (date).
Describe any changes other than editing from proposed to adopted version:

See Attachment A

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

Date adopted:

June 14, 2016

NAME (TYPE OR PRINT)

Katherine Vasquez

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 14, 2016

TIME: 3:49 PM

WSR 16-13-078

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	<u>10</u>	Repealed	<u>1</u>

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>10</u>	Repealed	<u>1</u>

Attachment A

The following changes were made in response to comments received during the open public comment period:

WAC 388-70-450(4) – removed the words “The child's wish to be involved in his or her Indian culture shall be considered.”

WAC 388-70-610 – changed from the proposed “may” to “must” requiring the appointment of a Children’s Administration Local Indian Child Welfare Advisory Committee (LICWAC) liaison as a necessary position for LICWAC to function.

WAC 388-70-610(3) – added “DSHS staff”

In addition to the changes listed above, the department has changed “shall” to “must” to be consistent with agency standards.

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-091 Foster care planning for Indian children—Definitions. (~~For the purposes of these rules, the term "Indian" includes the following groups:~~

~~(1) An enrolled Indian:~~

~~(a) Any person who is enrolled or eligible for enrollment in a recognized tribe.~~

~~(b) Any person determined, or eligible to be found, to be an Indian by the Secretary of the Interior.~~

~~(c) An Eskimo, Aleut or other Alaskan native.~~

~~(2) A Canadian Indian: Any person who is a member of a treaty tribe, Metis community or nonstatus Indian community from Canada.~~

~~(3) An unenrolled Indian: A person considered to be an Indian by a federally or nonfederally recognized Indian tribe or urban Indian/Alaskan native community organization.)~~

For the purposes of WACs 388-70-091, 388-70-092, 388-70-093, 388-70-095, 388-70-450, and 388-70-600 through 388-70-640, the term "Indian child" is defined as any unmarried and unemancipated Indian person who is under age eighteen and is one of the following:

(1) A member of an Indian tribe; or

(2) Is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-092 Foster care for Indian children—Tribal sovereignty. (~~Neither~~) The licensing of Indian foster homes (~~nor the~~) and placement and supervision of Indian children within the (~~exterior~~) boundaries of an Indian reservation (~~, shall~~) must not in any way abridge the sovereignty of an Indian nation or tribe (~~nor shall~~). Compliance with these rules and regulations (~~be deemed a relinquishment of~~) does not relinquish the sovereign authority (~~by~~) of an Indian nation or tribe or (~~by~~) the state of Washington.

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-093 Foster care for Indian children—Services. Documented efforts (~~shall~~) must be made to avoid separating the Indian child from his or her parents, relatives, tribe or cultural heritage. Consequently:

(1) When a family identifies Indian ancestry under the federal and state Indian child welfare acts, the children's administration (CA) caseworker has fifteen calendar days, or ten business days, from the date of identification to complete a family ancestry chart and begin the membership inquiry process. A copy of the family ancestry chart will be retained in the child's most current case file volume.

(2) CA staff will contact all identified federally recognized tribes in the case of Indian children being placed in foster care by

the department or for whom the department has supervisory responsibility(~~(, the local Indian child welfare advisory committee, predesignated by a tribal council, or appropriate urban Indian organization shall be contacted. Members of that committee will serve as resource persons for the purposes of cooperative planning and aid in placement)~~)).

~~((2))~~ (3) If requested by a federally recognized tribe, or if a federally recognized tribe is unavailable the local Indian child welfare advisory committees (LICWAC) as defined under WAC 388-70-600 will serve as resource persons for the purposes of cooperative planning and aid in placement.

(4) The resources of the tribal government, ((department and)) the Indian community, and the department ((shall)) must be used to locate the child's parents and relatives to assist in locating possible placement resources, and to assist in the development of a plan to overcome the problem that brought the child to the attention of the authorities, ((and/)) or the department, or both the authorities and the department.

~~((3))~~ (5) In planning foster care placements for Indian children, ((demonstrable consideration shall be given to tribal membership, tribal culture and Indian religions)) CA will follow the federal and state Indian child welfare acts with regard to placement preference. The case record ((shall)) must document the reasons and circumstances of casework decisions and consideration in those regards.

~~((4))~~ (6) ((The following resources for foster home placement of Indian children will be explored and followed in the following order: Relatives' homes, homes of other Indian families of same tribe, other Indian foster parents and non-Indian foster homes specifically recruited and trained in cooperation with the local Indian child welfare advisory committee to meet the special needs of Indian foster children and in the geographic proximity that will insure continuation of the parent child relationship. The training of non-Indian foster parents shall be designed and delivered in cooperation with the above committee and/or persons designated by the committee.

(5) For each Indian child who will be in care for more than 30 days, including those for whom adoption is planned, the ESSO shall make documented effort to complete two copies of the "family ancestry chart" (except in those cases where parents specifically indicate in writing they do not want the child enrolled). One copy will be retained in the child's file; the other will be forwarded to the bureau of Indian affairs office or the department of Indian affairs agency in Canada serving that child's tribe or band. The BIA of the department of Indian affairs agency will review the chart for possible enrollment eligibility in conjunction with the enrollment committee of the appropriate tribe or urban Indian community.

(6) The ESSO shall develop its social resources and staff training programs designed to meet the special needs of Indian children through coordination with tribal, Indian health service, bureau of Indian affairs social service staff, appropriate urban Indian and Alaskan native consultants, national, state and local Indian welfare organizations and ESSO child welfare advisory committees.) CA, in partnership with federally recognized tribes and CA contracted agencies, will develop training for staff and caregivers designed to meet the needs of Indian children and their families. CA may also partner with urban Indian organizations, CA LICWACs, national, state and local Indian child welfare organizations, and Native American/Alaskan Native consultants.

(7) The ~~((ESSO shall))~~ CA must make diligent and ~~((demonstrable))~~ ongoing efforts to recruit facilities and/or homes particularly capable of meeting the ~~((special))~~ needs of Indian children ~~((with the assistance of the local Indian child welfare advisory committees))~~.

AMENDATORY SECTION (Amending Order 1255, filed 12/1/77)

WAC 388-70-095 ~~((Foster care for Indian children--))~~ **Serious injury, death, abandonment, child abuse, neglect, incarceration of an Indian child.** When an Indian child in ~~((foster))~~ the care and custody of the department dies, is seriously injured, abandoned or incarcerated, in addition to other appropriate notifications, the department ~~((shall promptly advise the ESSO Indian child welfare advisory committee and appropriate tribal council. WAC 388-15-131(4) provides for notification about child abuse/neglect incidents))~~ must notify the federally recognized tribe or tribes within twenty-four hours.

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-450 **Adoptive planning for Indian children by department staff.** (1) ~~((Definitions: For the purposes of these rules the term "Indian" includes the following groups:~~

~~(a) Enrolled Indian~~

~~(i) Any person who is enrolled or eligible for enrollment in a recognized tribe.~~

~~(ii) Any person determined, or eligible to be found, to be an Indian by the secretary of the interior.~~

~~(iii) An Eskimo, Aleut or other Alaskan native.~~

~~(b) Canadian Indian: A person who is a member of a treaty tribe, Metis community or nonstatus Indian community from Canada.~~

~~(c) Unenrolled Indian: A person considered to be an Indian by a federally or nonfederally recognized tribe or urban Indian/Alaskan native community organization.)~~ In planning adoptive or pre-adoptive placements for Indian children under WAC 388-70-091, CA will follow the federal and state Indian child welfare acts with regard to placement preference.

(2) ~~((An adoptive family shall be considered Indian if one or both parents are Indian by the above definitions.))~~ An adoptive family must be considered Indian if one or both parents is:

(a) A member of a federally recognized tribe; or

(b) An Alaska Native and a member of a Regional Corporation as defined in Title 43 U.S.C. Sec. 1606.

(3) In adoptive planning for Indian children, the unique ~~((tribal, cultural and religious sovereignty of Indian nations,))~~ cultural, religious, and sovereignty of federally recognized tribes and communities ~~((shall))~~ must be recognized. ~~((When consistent with the wishes of the biological parents and/or the child,))~~ The adoption of Indian children by Indian families is the primary goal.

(4) ~~((Standards implementing the policy are:~~

~~(a) Adoption exchange. In the referrals for an Indian child, adoptive homes having the following characteristics shall be given preference in the following order, each category being allowed 30 days before proceeding to the next.~~

~~(i) An Indian family of the same tribe as the child.~~

~~(ii) A Washington Indian family considering tribal cultural differences.~~

~~(iii) An Indian family from elsewhere in the United States or Canada through the adoption resource exchange of North America. Attention shall be given to matching the child's tribal culture to that of the adoptive family.~~

~~(iv) Any other family which can provide a suitable home to an Indian child, as well as instill pride and understanding in the child's tribal and cultural heritage.~~

~~(b) Foster parent adoptions: As a part of the total evaluation for approving a foster parent adoption of an Indian child, ESSO service staff shall document the foster family's past performance and future commitment in exposing the child to its Indian tribal and cultural heritage. The child's wish to be involved in his Indian culture shall be considered.)~~ As a part of the total evaluation for approving a foster parent adoption of an Indian child, CA staff will document the foster family's past performance and future commitment in exposing the child to their Indian heritage.

~~((e)) (5) When an Indian child, in the custody of an out-of-state agency, is referred for potential adoptive parents residing in Washington, ((documentation shall be obtained that assures the department's standards for planning for Indian children have been complied with.))~~ CA will follow the interstate compact and placement of Indian children policy of Washington state.

(6) When an Indian child, in the care and custody of CA, is referred for adoption out of Washington, CA will follow the interstate compact and placement of Indian children policy of Washington state.

(7) In the event of an international adoption CA will follow policy and ensure that placement preferences are followed per the federal and state Indian child welfare acts.

~~((5)) (8) ((Local))~~ CA staff ((shall)) may consult with ((an)) a local Indian child welfare advisory committee in planning for adoptive placement of Indian children when a federally recognized tribe has chosen not to be involved.

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-600 Local Indian child welfare advisory committee—

Purpose. The intent of WAC ~~((388-70-096))~~ 388-70-091, 388-70-092, 388-70-093, 388-70-095, 388-70-450, and 388-70-600 through 388-70-640 ~~((is))~~ are to ensure protection of the Indian identity of Indian children, their rights as Indian children, and the maximum utilization of available Indian resources for Indian children. To ensure the realization of this intent, information about each current and future case involving Indian children for whom the department of social and health services has a responsibility ~~((shall))~~ must be referred to a local Indian child welfare advisory committee on an ongoing basis when a federally recognized tribe has not responded, is unavailable, or re-

quests LICWAC involvement according to procedures which recognize the privacy rights of the families.

The purposes of local Indian child welfare advisory committees are:

(1) To promote (~~relevant~~) social service planning for Indian children.

(2) To encourage the preservation of the Indian family, tribe, heritage, and identity of each Indian child served by the department of social and health services.

(3) To assist in obtaining participation by representatives of tribal governments and Indian organizations in departmental planning for Indian children for whom the department has a responsibility.

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-610 Local Indian child welfare advisory committee—Membership. Local Indian child welfare advisory committees (~~shall~~) must be established within each region. The number and locations of the local committees (~~shall~~) must be mutually determined by the Indian tribal governments and urban Indian organizations served by that region and the DSHS regional administrator.

(1) The committee (~~shall~~) must consist of representatives designated by tribal government and urban Indian organizations. The regional administrator (~~shall~~) must appoint committee members from among those individuals designated by Indian authorities. These members should be familiar with and knowledgeable about the needs of children in general as well as the particular needs of Indian children residing in the service area.

(2) The committee may also include bureau of Indian affairs staff, (~~and/or~~) Indian health service staff (~~if approved by participating tribal councils and urban Indian organizations~~), and other community members.

(3) The (~~DSHS~~) CA regional administrator (~~and/or the ESSO administrator shall~~) must appoint a member of his or her child welfare (~~supervisory~~) staff as a liaison member of the committee.

(4) The local Indian child welfare advisory committee is an ad hoc advisory committee not specifically authorized by statute. As such its members are not entitled to per diem and travel expenses for the performance of advisory committee functions. (~~This rule shall not be construed, however, to prohibit expense payments to members who are otherwise qualified for and perform services compensable under other programs such as the volunteer programs.~~)

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-620 Local Indian child welfare advisory committee—Functions. (~~(1)~~) The functions of the local Indian child welfare advisory committee are to:

(~~(a)~~) (1) (~~Assistance to~~) Assist DSHS staff in cooperative planning for Indian children.

~~((b) Consultation to DSHS staff regarding the provision of adoption, foster care and child protective services on behalf of Indian children.~~

~~(c) Reviewing the situations of Indian children.))~~

(2) Consult DSHS staff on behalf of Indian children, regarding the provision of the child's safety, well-being, and permanency on behalf of Indian children.

~~((d) Assisting in the implementation of recommended plans.~~

~~(e) Assisting in the recruitment of and making recommendations regarding the licensing of foster and adoptive homes for Indian children and providing culturally relevant services to Indian children.))~~

(3) Assist DSHS staff in providing culturally relevant services to Indian children; and

~~((f)) (4) Make requests to the ((ESSO)) CA administrator to initiate reviews of casework decisions that the committee believes to be detrimental to the best interests of Indian children.~~

~~((g) Acts in an advisory capacity to the regional administrator and ESSO administrator regarding the department's implementation and monitoring of the rules related to foster care, child protection, and adoption services to Indian children and their families.))~~

AMENDATORY SECTION (Amending Order 1167, filed 10/27/76)

WAC 388-70-630 Local Indian child welfare advisory committee—Meetings. Each committee and the ~~((regional administrator and/or ESSO administrator))~~ CA local Indian child welfare advisory committee staff liaison will mutually agree as to time, place and frequency and conduct of official committee meetings.

AMENDATORY SECTION (Amending WSR 89-05-063, filed 2/15/89)

WAC 388-70-640 Local Indian child welfare advisory committee—Confidentiality. The members of the local Indian child welfare advisory committee ~~((shall))~~ must agree to abide by RCW 74.04.060 and the rules of confidentiality binding the DSHS staff.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-70-615 Local Indian child welfare advisory committee—Subcommittees.