

Indian Child Welfare Act Implementation: Summary of Key Provisions in State and Federal Law that Apply to New Mexico Abuse/Neglect Proceedings

References	<p>Indian Child Welfare Act, 25 USC §§ 1901-1963(ICWA). Federal Final Rule (Final Rule), 25 CFR Part 23, effective for all proceedings initiated on after Dec. 12, 2016. Bureau of Indian Affairs Guidelines for Implementing the Indian Child Welfare Act (Guidelines), issued December 2016, https://bia.gov/cs/groups/public/documents/text/idc2-056831.pdf. NM Children’s Code (Ch. C.), Section 32A-1-1 <i>et seq.</i> NM Children’s Court Rules and Forms (Ch. Ct. Rule or Ch. Ct. Form), Rule Set 10.</p>	
Purpose & Liberal Interpretation <i>ICWA § 1902; Marlene C., 2011-NMSC-005</i>	<p>Congress adopted ICWA “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture.” ICWA § 1902. “When construing ICWA,” the court must resolve all “ambiguities liberally in favor of the Indian parent and the tribe in order to effectuate the purpose of the Act, which is to prevent the unnecessary removal of Indian children.” <i>State ex rel. CYFD v. Marlene C., 2011-NMSC-005, ¶ 19.</i></p>	
General Notes <i>Final Rule § 23.104; Guidelines B.3 & Purpose.</i>	<p>ICWA distinguishes between emergency, voluntary, and involuntary proceedings. Because some of ICWA’s provisions apply to only some types of proceedings, and other provisions apply to all proceedings, the Final Rule and Guidelines provide a very helpful chart that clearly identifies the type of proceeding to which each section of the Final Rule applies. Final Rule § 23.104; Guidelines B.3. The 2016 Guidelines for Implementing the Indian Child Welfare Act replace the BIA’s 1979 and 2015 Guidelines. <i>See Guidelines, Purpose.</i></p>	
Applicability <i>ICWA § 1903(1); Final Rule § 23.103; Guidelines B.2.</i>	<p>ICWA applies whenever an <i>Indian child</i> is the subject of a <i>child custody proceeding</i> or an <i>emergency proceeding</i> in state court. ICWA § 1903(1); Final Rule § 23.103; Guidelines, B.2. In determining whether ICWA applies, the court shall not consider factors like the parents’ or the Indian child’s participation in tribal cultural, social, religious, or political activities; the relationship between the Indian child and his or her parents; whether the parent ever had custody of the child; or the Indian child’s blood quantum. Final Rule § 23.103; Guidelines B.2. “If ICWA applies at the commencement of the proceeding, it will not cease to apply simply because the child reaches age 18 during the pendency of the proceeding.” Final Rule § 23.103; Guidelines B.2.</p>	
Indian child <i>ICWA § 1903(4); Final Rule, §§23.107 & 23.108; Guidelines B.1 & B.7; Ch. C. § 32A-1-4(K); Ch. Ct. Rule 10-315; Ch. Ct. Form 10-520.</i>	Definition	<p>An Indian child is any unmarried person who is under 18 <i>and</i> is <i>either</i>: (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe <i>and</i> is the biological child of a member of an Indian tribe. ICWA § 1903(4); Ch. C. § 32A-1-4(K). Note, “ICWA does not apply simply based on a child’s or parent’s Indian ancestry. Instead, there must be a political relationship to the tribe.” Guidelines B.1. Determinations of membership and eligibility for membership are determinations that Tribes make as sovereigns and state courts must defer to the Tribe’s determination. Guidelines B.1 and B.7. The Tribe’s determination may be provided in writing or by testimony at a hearing, or by other appropriate methods. Guidelines B.7.</p>

	Duty to Inquire	The court must ask each participant in every emergency, voluntary, or involuntary child custody proceeding whether the participant knows or has reason to know the child is an Indian child. This inquiry must be made on the record at the commencement of the proceeding, beginning at the 10-day custody hearing. The court must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child. After the initial inquiry, the court is not required to inquire whether a child is an Indian child at every hearing within a proceeding, but if a new proceeding (such as a TPR) is initiated for the same child, the court must make a finding as to whether there is reason to know the child is an Indian child in the new proceeding. Final Rule, § 23.107; Guidelines B.1; Ch. Ct. R. 10-315; Ch. Ct. Form 10-520.
	Duty to determine, reason to know	A court has reason to know a child is an Indian child if the court is informed (1) by any participant in the proceeding (including the child or an officer of the court), Indian Tribe, Indian organization, or agency that the child is an Indian child or that it has discovered information indicating that the child is an Indian child, (2) that the domicile or residence of the child, the child’s parent, or the child’s Indian custodian is on a pueblo, reservation, or in an Alaska Native village, (3) that the child is or has been a ward of a Tribal court, or (4) that either parent or the child possesses an identification card indicating membership in an Indian tribe. Ch. Ct. Rule 10-315. The Guidelines encourage expansive interpretation of these factors and urge further investigation into the child’s status early in the case if any of the factors are or may be present. Guidelines B.1.
	Effect on Proceedings	If there is <i>reason to know</i> that a child is an Indian child, the Court must (1) treat the child as an Indian child until it is determined on the record that the child is not an Indian child, and (2) confirm that CYFD has used due diligence to identify and work with all tribes for which there is reason to know that the child may be a member or eligible for membership in order to verify whether the child is a member or eligible for membership. Guidelines B.1; Ch. Ct. Rule 10-315; Ch. Ct. Form 10-520. If the court determines that the child is not an Indian child or that there is no reason to know the child is an Indian child (because none of the factors are present), CYFD should document this in their case file, the case should not be treated as an ICWA case, and the court should order the parties and participants to inform the court if they receive subsequent information that provides reason to know the child is an Indian child. Guidelines B.1; Ch. Ct. Rule 10-315; Ch. Ct. Form 10-520.
Child Custody Proceeding, defined Final Rule § 23.103; Guidelines, B.2.		A child custody proceeding includes: (1) an involuntary proceeding (foster care placement—including in a foster home, institution, or guardianship or conservatorship; termination of parental rights; and pre-adoptive and adoptive placement), (2) a voluntary proceeding that could prohibit the parent or Indian custodian from regaining custody upon demand, and (3) a proceeding involving a status offense if any part of the proceeding results in the need for out-of-home placement of the child (including foster care, pre-adoptive or adoptive placement, or TPR). Final Rule § 23.103; Guidelines, B.2.
Emergency removal, emergency proceeding ICWA § 1922; Ch. C. § 32A-4-16		An emergency proceeding is any court action that involves an emergency removal or emergency placement of an Indian child; <i>emergency removal and/or emergency placement</i> of an Indian child is permitted in order to prevent imminent physical damage or harm to the child. ICWA § 1922; Ch. C. § 32A-4-16; Final Rule § 23.2; Guidelines, C.1. The emergency removal and placement provisions apply to Indian children residing or domiciled off reservation, as well as to Indian children residing or domiciled <i>on</i>

	<p>reservation, but who are temporarily located <i>off</i> reservation. Final Rule § 23.2; Guidelines, C.1. When an Indian child is subject of an emergency proceeding, the State court must take certain steps to ensure that the removal or placement does not last longer than the emergency, including making findings on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child, holding a prompt hearing whenever new information indicates that the emergency situation has ended, and determining at every hearing during the emergency proceeding whether the emergency removal or placement is still necessary to prevent imminent damage or harm. When the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm, the removal or placement must be terminated immediately with one or more of the following actions: (1) CYFD initiating a child custody proceeding subject to ICWA, (2) transferring the child to the tribe’s jurisdiction, or (3) restoring the child to parent or Indian custodian. Final Rule § 23.113; Guidelines, C.3.</p>	
<p>Jurisdiction ICWA § 1911(a); Holyfield, 490 U.S. 30 (1989).</p>	<p>The Tribal court has <i>exclusive jurisdiction</i> over any child custody proceeding involving an Indian child residing or domiciled within the reservation, and over an Indian child who is ward of tribal court, notwithstanding the child’s residence/domicile. ICWA § 1911(a). In cases of tribal exclusive jurisdiction, the state court may take action through emergency proceedings and should continue to work on a case involving an Indian child until the case is dismissed from the state’s jurisdiction. To determine whether dismissal is necessary, the state court may need to contact the tribal court and/or the tribal child welfare agency. When dismissing and transferring a case to the tribal court, the state and tribal agencies and courts are encouraged to work cooperatively to protect the child’s safety and welfare during the transfer. Final Rule § 232.110; Guidelines F.1. When an Indian child resides or is domiciled <i>off</i> the reservation, the tribe and state have concurrent—but presumptively tribal—jurisdiction. Miss. Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 36 (1989). (<i>See Right to Transfer</i>)</p>	
<p>Jurisdiction and Transfer ICWA § 1911; Final Rule §§ 23.118 & 23.119; Guidelines C.3, F.5 & F.6; Ch. C. § 32A-1-9(D); Holyfield, 490 U.S. 30 (1989)</p>	<p>Concurrent jurisdiction, good cause not to transfer</p>	<p>In cases of <i>concurrent</i> jurisdiction, State Court <i>shall</i> transfer proceedings to tribe’s jurisdiction upon petition of Indian child’s parent, Indian custodian or tribe, unless: (1) parent or Indian custodian objects; or (2) the tribe declines transfer; or (3) good cause exists to deny transfer. ICWA § 1911(b); Guidelines C.3; Ch. C. § 32A-1-9(D). Burden is on party opposing transfer to show, on the record, that good cause exists <i>not</i> to transfer. State courts shall <i>not</i> consider the following as reasons not to transfer: proceedings at an advanced stage if the parent, Indian custodian or Tribe did not receive notice until an advanced stage, past proceedings for which transfer was not sought, transfer would result in change of placement, the child’s cultural connections (or lack thereof) with the tribe or reservation, socio-economic conditions within the tribe or reservation, or perceived inadequacy of tribal social services or judicial systems. The basis for any state court decision to deny transfer should be stated orally on the record or in a written order. Final Rule § 23.118; BIA Guidelines F.5.</p>
	<p>Tribal exclusive jurisdiction</p>	<p>In cases of <i>exclusive tribal</i> jurisdiction, the case should be transferred to tribal court without delay even if a parent objects. Miss. Band, 490 U.S. at 53.</p>
	<p>Timing</p>	<p>Transfer is available at any stage, even at a late stage of the proceeding. Guideline F.2.</p>
	<p>Transferring the case</p>	<p>If the tribal court accepts the transfer, the state court should expeditiously provide all records related to the proceeding, including all pleadings and the court record, and should cooperate to minimize disruptions in</p>

	services to the family. Final Rule § 23.119; Guidelines F.6.
Right to counsel ICWA § 1912(b); Ch. C. § 32A-4-10	If indigent, the parent or Indian custodian has right to court-appointed counsel in any removal, placement, or termination proceeding. The court may appoint counsel for an Indian child, if in best interest of child. ICWA § 1912(b); Ch. C. § 32A-4-10.
Right to intervene ICWA § 1911(c); Ch. C. Rule 10-122; Ch. Ct. Form 10-562	The Indian custodian and tribe have a right to intervene any time in foster care or TPR proceedings. ICWA § 1911(c).
Right to review reports Ch. C. § 32A-4-33(B)(10)	All records/information concerning party to abuse/neglect proceeding shall be disclosed only to persons or entities of a tribe specifically authorized to inspect records according to ICWA. Ch. C. § 32A-4-33(B)(10).
Right to extra time to prepare ICWA §1912(a); Ch. Ct. Rule 10-312; <i>Marlene C.</i> , 2011-NMSC-005	No foster care placement or TPR proceeding shall be held until at least 10 days <i>after</i> receipt of notice by parent <i>or</i> Indian custodian <i>and</i> the tribe or BIA. Court shall grant 20 additional days to parent, Indian custodian or tribe, upon request, to prepare for proceeding. ICWA § 1912(a). In NM, the 10-day custody hearing under § 32A-4-18 is an emergency proceeding (under ICWA § 1922) and is not subject to ICWA’s 10-day notice or “extra-time to prepare” requirements. Instead, the notice and timing requirements apply to the adjudication. <i>State ex rel. CYFD v. Marlene C.</i> , 2011-NMSC-005, ¶ 34; <i>but see</i> Ch. Ct. R. 10-312(E).
Custody & investigation Guidelines B.8; Ch. C. §§ 32A-4-6(C) & -22(I); <i>Marsalee P.</i> , 2013-NMCA-062	When taking child into custody, CYFD shall make reasonable efforts to determine whether the child is an Indian child. Ch. C. § 32A-4-6(C). CYFD shall investigate whether the child is eligible for enrollment as a member of an Indian tribe, and if so, shall pursue enrollment on the child’s behalf. Ch. C. § 32A-4-22(I); State ex rel. CYFD v. Marsalee P., 2013-NMCA-062; <i>accord</i> Guidelines B.8.
Notice of the Proceeding ICWA § 1912(a); Guidelines C.9; Ch. C. § 32A-1-14(B); Ch. Ct. Rule 10-312; <i>Marlene C.</i> , 2011-NMSC-005	In <i>involuntary</i> proceedings (but not pre-adoptive proceedings or adoptive proceedings) where the court knows or has reason to know that an Indian child is involved, CYFD <i>shall</i> notify parent <i>or</i> Indian custodian, <i>and</i> the Indian child’s tribe by registered or certified mail with return receipt requested of the filing of the Abuse or Neglect Petition and their right to intervene. ICWA § 1912(a); Ch. Ct. Rule 10-313; Final Rule § 23.11; Guidelines D.1. The notice must comply with the content and confidentiality provisions in Final Rule § 23.111 . Although not required by ICWA, NM requires notice in adoption proceedings. Ch. C. § 32A-1-14(B). Copies of notices must be sent to the BIA Regional Director by registered or certified mail with return receipt requested. Final Rule § 23.11; Guidelines D.1. If the identity/location of parent or Indian custodian and tribe cannot be determined, notice must be sent to Sec. of Interior (BIA). ICWA § 1912(a); Final Rule § 23.11; Guidelines D.6. Because the 10-day custody hearing is an emergency hearing, not a foster care placement, notice to the Indian child’s tribe is not required by ICWA before the custody hearing. <i>State ex rel. CYFD v. Marlene C.</i> , 2011-NMSC-005, ¶¶ 34 & 35; Final Rule § 23.104; Guidelines B.3. However, Children’s Court Rule 10-312(E) requires notice of the filing of an abuse or neglect petition be provided to the child’s tribe in the “form and manner” required by ICWA if the child is enrolled or eligible for enrollment in an Indian tribe. Whether or not notice is strictly required at the 10-day custody hearing, CYFD should take all practical steps to inform the Indian child’s Tribe of the removal and hearing, such as contact by telephone, email or in person. Guidelines C.9. In addition, § 23.113(c) of the Final Rule requires CYFD to report to the court on its efforts to contact the parents, Indian

	custodian, and Tribe about the custody hearing.	
Placement Preferences ICWA §§ 1903(2) & 1915; Final Rule §§ 23.130 - 23.132; Guidelines H.1 – H.5; Ch. C. § 32A-4-9 & 32A-5-5(A); Ch. Ct. Rule 10-318; <i>Casey J.</i> , 2015- NMCA-088	Foster care or pre-adoptive placement	Child must be placed in the least restrictive setting that most approximates family, meets child’s special needs, and is within reasonable proximity of his/her home. Absent good cause, preference <i>shall</i> be given to: 1) a member of <i>child’s extended family</i> , as defined by law/custom of child’s tribe or, absent law or custom, shall be person age 18 or older who is child’s grandparent, aunt/uncle, brother/sister, brother/sister-in-law, niece/nephew, first/second cousin, or stepparent; 2) a foster home licensed, approved or specified by the child’s tribe; 3) an Indian foster home licensed or approved by authorized non-Indian licensing authority; <i>or</i> 4) an institution for children approved by an Indian tribe or operated by Indian organization which has a program suitable to meet child’s needs. ICWA §§ 1903(2) & 1915(b); Ch. C. § 32A-4-9; Final Rule § 23.131; Guidelines H.2.
	Adoptive placement	Absent good cause, preference <i>shall</i> be given to: 1) a member of child’s extended family, as defined by law/custom of child’s tribe or, absent law or custom, shall be person age 18 or older who is child’s grandparent, aunt/uncle, brother/sister, brother/sister-in-law, niece/nephew, first/second cousin, or stepparent; 2) other members of the Indian child’s tribe; <i>or</i> 3) other Indian families. ICWA §§ 1903(2) & 1915(a); Ch. C. § 32A-5-5(A). Each placement should be considered in the order listed, unless the Tribe has specified a different order by resolution. Final Rule § 23.130; Guidelines H.1.
	Good cause to depart from placement preferences, permissible and impermissible considerations	Any party seeking a departure must prove good cause not to follow the placement preferences by <i>clear and convincing evidence</i> . The court’s determination of good cause must be made on the record or in writing and should be based on one or more of the following: (1) request of parents, (2) request of child, (3) presence of a sibling attachment that can be maintained only through a particular placement, (4) the extraordinary physical or emotional needs of the child, such as specialized treatment services unavailable in the community of a preferred placement, (5) unavailability of a suitable placement after a diligent search was conducted to find a preferred placement.. ICWA § 1915(a); Final Rule § 23.132; Guidelines H.4; Ch. C. §§ 32A-4-9 & 32A-5-5(A); Ch. Ct. Rule 10-318. A placement may not depart from the preferences based on the socioeconomic status of any placement relative to another placement or solely because of ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA. Final Rule § 23.132; Guidelines H.5; Ch. Ct. Rule 10-318.
	Different order of placement preferences	If the child’s tribe established a different order of preference by resolution, CYFD or court shall follow that different order so long as it is the least restrictive setting appropriate for the child. The court must consider, but need not follow, the preference of the Indian child or the Indian child’s parent. ICWA § 1915(c); Final Rule §§ 23.130 & 23.131; Guidelines H.1 & H.2.
	Due diligence required	When removing an Indian child, CYFD should conduct and document a diligent search for a placement that complies with ICWA’s placement preferences, but active efforts to find such a placement are not required. Guidelines H.3; <i>State ex rel. CYFD v. Casey J.</i> , 2015-NMCA-088, ¶ 14 (explaining that §1912(d) of ICWA,

		requiring the agency to make active efforts to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family, does not apply to the placement preferences listed in §1915).
Foster Care Placement/ Adjudication ICWA § 1912(d)-(e); Final Rule § 23.121; Guidelines G.1.; Ch. C. § 32A-4-20; <i>Marlene C.</i> , 2011-NMSC-005; <i>Yodell B.</i> , 2016-NMCA-029	Burden of Proof, Active Efforts & QEW requirement	<p>The court must find, by clear and convincing evidence, that <i>active efforts</i> were made to provide remedial services and rehabilitative programs designed to prevent breakup of Indian family and such efforts proved unsuccessful, including testimony of <i>qualified expert witnesses</i> that continued custody by parent or Indian custodian likely to result in serious emotional or physical damage to child. ICWA § 1912(d)-(e); Ch. C. § 32A-4-20; <i>CYFD v. Marlene C.</i>, 2011-NMSC-005, ¶ 36 (the adjudicatory hearing is the hearing when a “foster care placement” occurs); <i>CYFD v. Yodell B.</i>, 2016-NMCA-029, (filed Dec. 21, 2015).</p> <p>Clear and convincing evidence requires proof of a <i>causal relationship</i> between conditions in the home and serious emotional or physical damage to the particular child who is subject of the proceedings. Without this causal relationship, the court <i>cannot</i> conclude that there is clear and convincing evidence based solely only on evidence of community or family poverty, isolation, single parenthood, the custodian’s age, crowded/inadequate housing, substance abuse, or nonconforming social behavior. Final Rule § 23.121; Guidelines G.1.</p>
	Notice	See Notice of the Proceeding, above.
	Timing of Hearing	Because “foster care placement” occurs at the adjudication in New Mexico, the adjudication may not be held for at least 10 days after receipt of notice by the parent or Indian custodian and the tribe or BIA. A If requested by the parent, Indian custodian or tribe, the Court shall grant an additional 20 days to prepare for proceeding. ICWA §1912(a); <i>CYFD v. Marlene C.</i> , 2011-NMSC-005, ¶ 36.

<p>Active Efforts ICWA § 1912(d); <i>Marlene C.</i>, 2011-NMSC-005; <i>Yodell B.</i>, 2016-NMCA-029</p>	<p>Requirement, Burden of Proof, Timing</p>	<p>Active efforts to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family are <i>required in every</i> ICWA case, ICWA § 1912(d), and must be proved by clear and convincing evidence, <i>CYFD v. Yodell B.</i>, 2016-NMCA-029, (filed Dec. 21, 2015), at the adjudicatory hearing. <i>CYFD v. Marlene C.</i>, 2011-NMSC-005, ¶ 36.</p> <p>ASFA does <i>not</i> alter ICWA’s active efforts requirement: even where ASFA may relieve the State from proving reasonable efforts, active efforts are required.</p>
	<p>Meaning</p>	<p>“Active efforts means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family.” Final Rule § 23.2. Active efforts must assist the parent through the steps of a case plan and with accessing or developing the resources need to satisfy the plan; active efforts constitute more than reasonable efforts. <i>Id.</i>; <i>Yodell B.</i>, ¶¶ 26, 29 (active efforts are more involved and less passive than reasonable efforts; reversing TPR because CYFD “took a passive role by shouldering Father with the burden of not only independently locating and obtaining services, but also ensuring that service providers were communicating with the Department about his progress.”). To the maximum extent possible, active efforts should be consistent with the prevailing social and cultural conditions and way of life of the Indian child’s tribe and should be conducted in partnership with the Indian child and his or her parents, extended family, Indian custodians, and Tribe. Final Rule § 23.2; Guidelines E.3. For examples of active efforts, <i>see Guidelines E.3 & E.4.</i></p> <p>Active efforts are not required to find a placement according to the ICWA placement preferences. <i>State ex rel. CYFD v. Casey J.</i>, 2015-NMCA-088, ¶ 14.</p>
<p>Term. of Parental Rights, Permanent Guardianship ICWA § 1912(d)-(f); Ch. C. §§ 32A-4-29(I) & -32(E)</p>	<p>Burden of proof for TPR – <i>beyond a reasonable doubt.</i> In any proceeding involving ICWA, the grounds for termination of parental rights or permanent guardianship shall be proved beyond a reasonable doubt. Burden of Proof for Active Efforts – <i>clear and convincing evidence.</i> In addition to finding the grounds for termination, the court must find by clear and convincing evidence that <i>active efforts</i> were made to provide remedial and rehabilitative services designed to prevent breakup of Indian family and that such efforts proved unsuccessful, including testimony of a <i>qualified expert witness</i> that continued custody by parent or Indian custodian likely to result in serious emotional or physical damage to child. ICWA § 1912(d)-(f); Ch. C. §§ 32A-4-29(I) & -32(E).</p>	
<p>Qualified Expert Witness (QEW) ICWA § 1912(e)-(f); Final Rule § 23.122; Guidelines G.2</p>	<p>“The phrase ‘qualified expert witness: is meant to apply to expertise beyond normal social worker qualifications.” ICWA § 1912. The QEW should have specific knowledge of the prevailing social and cultural standards of the Indian child’s tribe so that “the question of whether the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child is examined in the context of the prevailing cultural and social standards of the . . . tribe.” Guidelines G.2. The court or any party may request assistance of child’s tribe or BIA to locate a QEW. The tribe may designate a person who is qualified to testify as to the prevailing social and cultural standards in the tribe. ICWA § 1912(e)-(f); Final Rule § 23.122; Guidelines G.2. The state social worker regularly assigned to the Indian child may not serve as the QEW concerning the child. Final Rule § 23.122; Guidelines G.2.</p>	

<p>Parental consent in vol. placement or termination ICWA § 1913(c); Final Rule § 23.125</p>	<p>In <i>voluntary</i> proceedings for termination of parents rights to or adoptive placement of an Indian child, consent of parent may be withdrawn for any reason at any time prior to the entry of final decree of termination or adoption, and child must be returned to parent. ICWA § 1913(c); Final Rule § 23.125.</p>
<p>Invalidation of proceedings ICWA § 1914; Final Rule § 23.137; Guidelines K.3</p>	<p>Any Indian child, any parent or Indian custodian from whose custody the child was removed, and the Indian child’s tribe may petition any court of competent jurisdiction to invalidate the foster care placement or termination of parental rights, by showing violations of § 1911 (jurisdiction), § 1912 (pending proceedings), or § 1913 (parental rights). ICWA § 1914. A court of competent jurisdiction may be a different court than the court where the original proceedings occurred. A party may assert violations of ICWA that impacted the ICWA rights of other parties (e.g., a parent can assert violation of a tribe’s right to notice). Final Rule § 23.137; Guidelines K.3.</p>
<p>Return of custody after TPR or relinquishment ICWA § 1916</p>	<p>When final adoption decree of Indian child is vacated/set aside, or adoptive parents voluntarily consent to TPR, court shall grant petition for return of child by a biological parent or prior Indian custodian unless not in child’s best interest. ICWA § 1916.</p>
<p>Improper removal ICWA § 192; Final Rule § 23.1140</p>	<p>If any party asserts or the court has reason to believe that an Indian child has been improperly removed from a parent or Indian custodian or improperly retained in custody, the court must expeditiously determine whether the removal or retention was improper, and if so, the court must immediately return the child to parent or Indian custodian unless return would subject child to substantial and immediate danger or threat of immediate danger. ICWA § 1920; Final Rule § 23.114.</p>
<p>IGAs ICWA § 1919(a); Guidelines A.2; Ch. C. § 32A-1-8(E)</p>	<p>ICWA permits tribes and states to enter into Intergovernmental Agreements that establish specific procedures to follow in ICWA proceedings. ICWA § 1919(a); Guidelines A.2. See also Ch. C. § 32A-1-8(E).</p>