

## Title 18: Mississippi Department of Child Protection Services

### Part 303: Federal Programming and Requirements

Chapter 1	ELIGIBILITY, FOSTER CARE FINANCIAL ASSESSMENT .....	1
Rule 1.1.	<i>Title IV-E Benefits</i> .....	1
Rule 1.2.	<i>Voluntary Placement Agreement</i> .....	1
Rule 1.3.	<i>Judicial Determination</i> .....	2
Rule 1.4.	<i>Services Provided to Parents or Other Relatives</i> .....	3
Rule 1.5.	<i>AFDC Eligibility</i> .....	3
Rule 1.6.	<i>Reimbursability Requirements</i> .....	6
Rule 1.7.	<i>Medicaid Eligibility</i> .....	6
Rule 1.8.	<i>Refugees and/or Unaccompanied Minors</i> .....	7
Rule 1.9.	<i>Child Welfare Service (CWS) Eligibility</i> .....	8
Chapter 2	INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN .....	9
Subchapter 1 – ICPC Overview .....		9
Rule 2.1.1.	<i>Authority</i> .....	9
Rule 2.1.2.	<i>Purpose</i> .....	9
Rule 2.1.3.	<i>Use of ICPC</i> .....	9
Rule 2.1.4.	<i>Placements</i> .....	9
Rule 2.1.5.	<i>Conditions for Placement</i> .....	11
Rule 2.1.6.	<i>Penalties for Illegal Interstate Placements</i> .....	11
Subchapter 2 – ICPC Placements .....		11
Rule 2.2.1.	<i>Child Not Yet Placed</i> .....	11
Rule 2.2.2.	<i>Public Adoption Placement</i> .....	12
Rule 2.2.3.	<i>Private Adoption Placement</i> .....	13
Rule 2.2.4.	<i>Court Referral</i> .....	14
Rule 2.2.5.	<i>Conversion of Intrastate Placements</i> .....	15
Rule 2.2.6.	<i>Placement in a Residential Facility</i> .....	16
Rule 2.2.7.	<i>Delinquent Children</i> .....	17
Rule 2.2.8.	<i>Priority/Expedited Placements</i> .....	18
Subchapter 3 – ICPC Assessments and Management.....		19
Rule 2.3.1.	<i>Reports of Assessment or Home Study</i> .....	19
Rule 2.3.2.	<i>Reports Received Without a Decision</i> .....	20
Rule 2.3.3.	<i>Timeframe for Final Decision by Receiving State</i> .....	20

Rule 2.3.4.	<i>Sending Agency Authority</i> .....	21
Rule 2.3.5.	<i>Jurisdiction and Responsibilities</i> .....	21
Rule 2.3.6.	<i>Completion of ICPC-100B</i> .....	22
Rule 2.3.7.	<i>Supervision Following Placement</i> .....	22
Rule 2.3.8.	<i>Supervision Reports</i> .....	23
Rule 2.3.9.	<i>Termination of Supervision</i> .....	23
Rule 2.3.10.	<i>Return of Child to the Sending State</i> .....	24
Rule 2.3.11.	<i>Closure of ICPC Case</i> .....	24
Rule 2.3.12.	<i>Border Agreements</i> .....	24
Chapter 3	INDIAN CHILD WELFARE ACT (ICWA) .....	25
Subchapter 1 – ICWA Overview	.....	25
Rule 3.1.1.	<i>ICWA Overview</i> .....	25
Rule 3.1.2.	<i>Jurisdiction Over an Indian Child</i> .....	25
Rule 3.1.3.	<i>Reports on Native American children</i> .....	25
Rule 3.1.4.	<i>Active Efforts Defined; Required</i> .....	25
Rule 3.1.5.	<i>Applicability of other federal statutes</i> .....	27
Subchapter 2 – Children Living on Tribal Land	.....	27
Rule 3.2.1.	<i>Reports of Child Living on Tribal Land –</i> .....	27
Rule 3.2.2	<i>Notifications to the Tribal Council</i> .....	27
Rule 3.2.3	<i>Notification when tribal membership cannot be ascertained</i> .....	29
Rule 3.2.4.	<i>Timing of child-custody proceeding after notice</i> .....	29
Rule 3.2.5.	<i>Voluntary placement or in-home services</i> .....	29
Rule 3.2.6.	<i>Adoption</i> .....	30
Subchapter 3 – Emergency Removal of Indian Child	.....	30
Rule 3.3.1.	<i>Emergency Removal</i> .....	30
Rule 3.3.2.	<i>Actions by State Court</i> .....	30
Rule 3.3.3.	<i>Termination of emergency proceeding</i> .....	30
Rule 3.3.4.	<i>Petition for emergency removal</i> .....	30
Rule 3.3.5.	<i>Continuance of emergency proceeding</i> .....	31

## **Title 18: Mississippi Department of Child Protection Services**

### **Part 303: Federal Programming and Requirements**

#### **Chapter 1 ELIGIBILITY, FOSTER CARE FINANCIAL ASSESSMENT**

Rule 1.1. *Title IV-E Benefits* are an individual entitlement for certain children in out-of-home placement. There are two major categories of Title IV-E status: Eligibility and Reimbursability.

Eligibility is determined in accordance with a voluntary placement agreement or a judicial determination. The “contrary to the welfare” determination must be made in the first court ruling ordering, even temporarily, the removal of a child from home. If the determination regarding “contrary to the welfare” is not made in the first court ruling pertaining to removal from the home, the child will not be eligible for Title IV-E foster care maintenance payments for the duration of that stay in foster care.

Reimbursability is determined on a monthly basis. The reimbursability criteria must be met for the state to receive federal support for the child. An assessment of several Title IV-E criteria is required to determine whether the child is federally reimbursable in any particular month. The child must be eligible to be reimbursable. However, once eligibility is established, a child may lose and regain reimbursability depending on changes in the circumstances of placement.

*Source: Miss. Code Ann. §§ 43-26-1, 43-26-17, 43-15-3; 42 U.S.C. § 672*

Rule 1.2. *Voluntary Placement Agreement* – Criteria for voluntary placement agreement includes:

1. The assistance of the Mississippi Department of Child Protection Services (MDCPS or Agency) has been requested by the parents or legal guardians;
2. There is a written agreement, binding to all parties, which specifies the legal status of the child, the rights and obligations of parents, child, and MDCPS while the child is in placement;
3. It cannot exceed 180 days; and
4. It can be revoked at any time by the parent or legal guardian.

If a voluntarily placed child meets all other Title IV-E requirements, s/he may be Title IV-E funded up to 180 days from the date of the Agreement.

Prior to the release, while the Voluntary Placement Agreement is in effect, MDCPS can petition the court for a judicial determination that such a placement after the

removal of the child is in the best interest of the child and establishment of Title IV-E eligibility beyond the 180 days.

*Source: Miss. Code Ann. §§ 43-26-1, 43-26-17, 43-15-3; 42 U.S.C. § 672*

Rule 1.3. *Judicial Determination* – The judicial determinations for Title IV-E eligibility are intended to ensure that children are not removed from their homes unnecessarily. The first judicial determination must be to the effect that “continuation in the home would be contrary to the welfare of the child” or “removal was in the best interest of the child.”

There must also be a judicial determination that “reasonable efforts were made to prevent the child’s removal from the home.” This determination must be made even if the removal is only temporary.

In emergency situations, time does not allow for reasonable efforts to be made to prevent removal; therefore, the court order must indicate that “due to an emergency situation, reasonable efforts to prevent removal were not possible.” If reasonable efforts were not made, there must be documentation that reasonable efforts are now being made to return the child to the home.

#### Specific Language

For Title IV-E eligibility, the judicial determination must contain language as follows:

1. “Removal was in the best interest of the child” or “to remain in the home would be contrary to the welfare of the child”
2. “Reasonable efforts have been made to maintain the child within his own home”
3. “The circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home and there is no reasonable alternative to custody and;”
4. “Reasonable efforts will be made to return the child,” or
5. “Reasonable efforts to maintain the child within his home shall not be required if the court determines that:”
  - a. “The parent has subjected the child to aggravated circumstances. (including but not limited to abandonment, torture, chronic abuse, and sexual abuse); or”
  - b. “The parent has been convicted of murder or convicted of voluntary manslaughter of another child of that parent; or”

- c. “The parent has aided or abetted, attempted, conspired, or solicited to commit that murder or voluntary manslaughter; or a felony assault that results in the serious bodily injury to the surviving child or another child of that parent; or”
- d. “The parental rights of the parent to a sibling have been terminated involuntarily; and”
- e. “The effect of the continuation of the child’s residence within his own home will be contrary to the welfare of the child and that the placement of the child in foster care is in the best interest of the child.”

Additional Determination

A judicial determination must also be obtained that states reasonable efforts were made to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in APPLA) within twelve (12) months of the date the child is considered to have entered foster care, and at least once every twelve (12) months thereafter while the child is in foster care.

*Source: Miss. Code Ann. §§ 43-21-603, 43-26-1, 43-26-17, 43-15-3; 42 U.S.C. § 672*

Rule 1.4. *Services Provided to Parents or Other Relatives* – Federal requirements governing Title IV-E foster care specify that the goal of services provided parents or other relatives will be to:

- 1. Return the child to his own home;
- 2. Arrange placement with other relatives;
- 3. Make other appropriate plans for the child’s permanent care, such as adoption;
- 4. Make some other plans that best meets the needs of the individual child.

These services must be provided on a regular basis during the time of placement of the child in foster care. The safety, permanency, and well-being of the child must be addressed at each review of the child’s plan and documented in the case record.

*Source: Miss. Code Ann. §§ 43-21-603, 43-26-1, 43-26-17, 43-15-3; 42 U.S.C. § 675*

Rule 1.5. *AFDC Eligibility* – AFDC relatedness refers to the requirement that for a child to be classified as Title IV-E eligible, s/he must have some relationship to the general AFDC program authorized under Title IV, Part A IV-A.

This relationship can be established if any one of the following criteria is met:

1. In the month the child was removed from the home, the child was in an active AFDC case;
2. In the month the child was removed from the home, the child would have been eligible for AFDC had an application been made; or
3. In the six (6) months prior to the month the child was removed from the home, the child was living with a qualified relative and would have been eligible for AFDC if an application had been made.

For those children who have the potential to have been AFDC eligible at the time of removal, if the program still existed, but there exists the potential that these children could be Title IV-E eligible if application were made, the following AFDC eligibility conditions still apply: Age, Enumeration, Residence, School Attendance, Citizenship, Living in the home of a specified relative, Deprivation, Need as determined by resources and income of the family unit.

Age – The age limit for Title IV-E funding is eighteen (18) years of age, depending on the option of the state.

Enumeration – The application for and disclosure of a Social Security account number is a technical factor of eligibility.

Residence – The child must be a resident of the state of Mississippi. Residents of Mississippi are people who are voluntarily living in Mississippi with the intention of making their home here.

Compulsory School Attendance – Compulsory school age children must attend school and documentation of attendance must be maintained in the case record. Compulsory school age child is a child who:

1. Has attained, or will attain, the age of six (6) years on or before September 1 of the calendar year;
2. Who has not attained the age of seventeen (17) years on or before September 1 of the calendar year; and
3. Includes any child who has attained, or will attain, age five (5) on or before September 1 and is enrolled in a full-day public school kindergarten program.

Citizenship and Alienage – The child must be a citizen of the United States or an alien lawfully admitted for permanent residence or otherwise residing in the United States under color of law. If the child is an alien, the case record must have verification that the child is a legal alien.

Living with a Specified Relative – If a child was not removed from a parent, s/he had to have been living with another relative who comes within the fifth degree of relationship. The child and relative must live together in a place of residence maintained by the relative as his/her home. The child must also have qualified for AFDC during the month the child came into custody.

Deprivation – A child is deprived of the support of one of his parents when there is:

1. Parental absence from the home due to:
  - a. Lack of marriage, voluntary separation, desertion, or divorce.
  - b. A parent living at an address separate and apart from the child except when:
    - i. the parent left home to seek or accept employment or
    - ii. the parent is absent solely because of active duty in the uniformed service of the United States.
  - c. A continued absence when a parent is out of the home and the nature of the absence is such that it terminates or interrupts that parent's functioning as a provider of maintenance, physical care, or guidance for the child.
  - d. The known or indefinite duration of the absence precludes the child from relying on the parent's support and care of the child, thus increasing the responsibilities of the caretaker relation with whom the child lives.
2. Incapacity is a condition of deprivation which is applicable to the physical or mental incapacity of one or both parents. Medical documentation and a medical review are required for a determination of incapacity if the parent is not receiving a disability type of assistance, such as Supplemental Security Income (SSI) or Social Security.
3. Death of a parent must be verified with supporting evidence such as a death certificate or verification from Social Security, etc. that the child(ren) receives survivor's benefits.
4. Unemployment of principal wage earner – When both parents are in the household at the time of removal and neither are disabled or employed, MDCPS can make a determination as to whether the principal wage earner is unemployed. MDCPS must have verification of wages/unemployment for the past two years to determine the primary wage earner.

Needs – determined by resources and income of the family unit.

1. The amount of real and personal property that can be reserved for the child’s family unit cannot exceed \$10,000 per family unit.
2. The initial eligibility budget to determine the household’s income will include the family unit which consists of the legal parent(s) and any siblings under the age of eighteen (18) who live in the household from which the children were removed.

*Source: Miss. Code Ann. §§ 43-21-603, 43-26-1, 43-26-17, 43-15-3; 37-13-91, 42 U.S.C. § 672*

Rule 1.6. *Reimbursability Requirements* – To be Title IV-E reimbursable, the child must be placed in a licensed resource home or licensed childcare facility:

A “resource home” for children is one licensed by MDCPS as meeting the standards established for licensing. The term “resource home” includes adoptive homes.

A “childcare institution” is a child-caring facility, either private or public, which accommodates no more than twenty-five (25) children and is licensed by the state as meeting the standards established for licensing.

For a childcare facility to be eligible for title IV-E funding, the licensing file for the facility must contain documentation which verifies that safety considerations with respect to the staff of the facility have been addressed.

An “adoptive placement” is an adoptive home that meets licensure requirements which has been approved through the Adoption Unit of MDCPS.

Non-Reimbursable Placements

Detention Facilities – detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent are not considered Title IV-E reimbursable.

Relatives – Foster board payments are not made for children placed with relatives unless the relative becomes a licensed foster home.

*Source: Miss. Code Ann. §§ 43-21-603, 43-26-1, 43-26-17, 43-15-3; 42 U.S.C. § 672*

Rule 1.7. *Medicaid Eligibility* – the primary source of funding for medical expenses of children in the custody of MDCPS is Medicaid and local/state funds. Foster children are Medicaid eligible when the child:

1. Receives SSI. The Medicaid benefits are authorized by the Social Security

Administration.

2. Is eligible for and receiving Medicaid in the home of a parent or unlicensed relative. The eligibility determination and authorization are handled by the Division of Medicaid office in the county of residence.
3. Meets the following eligibility requirements:
  - a. Custody – The child must be in the sole custody of MDCPS.
  - b. Resources – The child’s own resources cannot exceed \$10,000.
  - c. Income – If the child’s monthly unearned income is less than the 185% AFDC need rate for one child, the child’s monthly unearned income will be tested against the State Foster Care Need Standard. If the child’s unearned income is below this rate, the child is eligible for CWS Medicaid. If the child’s monthly unearned income is greater than the 185% AFDC need rate for one child, the child will be ineligible for Title IV-E Medicaid.

Interstate Compact Placement for Children

Title IV-E foster children receiving Title IV-E adoption assistance and ICPC children who are Title IV-E eligible in the state of origin are eligible for Medicaid in the state in which they reside provided: a) the Agency has written verification that the child is Title IV-E eligible in the state of responsibility and b) the child is in a licensed resource home/facility in Mississippi.

Third Party Liability

The Agency will make direct inquiry to the parent(s) or guardian regarding whether the child has any type of private insurance coverage and will report all third-party liabilities.

*Source: Miss. Code Ann. §§ 43-13-115, 43-13-116, 43-26-1*

Rule 1.8. *Refugees and/or Unaccompanied Minors* – Two broad categories of children may qualify for refugee funding:

1. Those entering the United States with their families.
2. Those designated as “unaccompanied minors” on the I-94 cards (DHS – USCBP Arrival/Departure cards)

These children must be certified for Child Welfare Service (“CWS”) funds and not Title IV-E. The children will also be eligible for Medicaid benefits. To be eligible for foster care refugee funds, one of the following conditions must be met:

1. The child must have been removed from the home of a family receiving refugee financial and medical assistance and the child must have been included in the grant, or
2. The child has appropriate refugee or alien status as established by the National Immigration Service (NIS) and the child has been in the United States less than eight months, or
3. The child entered this country without a family and has received appropriate unaccompanied minor status by the NIS.

*Source: Miss. Code Ann. § 43-26-1*

Rule 1.9. *Child Welfare Service (CWS) Eligibility* – Children who are not eligible for Title IV-E foster care payments will have their needs tested to determine eligibility for foster care payments to be made from Title IV-B, CWS funds. If the criteria for CWS eligibility are met, the child will be eligible for foster care payment to be made from CWS funds:

1. Must be in the custody of MDCPS and under eighteen (18) years of age if the court order is by the youth court or under twenty-one (21) years of age if the order is by the chancery court.
2. Must be placed in an approved resource home or child caring facility.
3. Own unearned income must not be over the amount of the board payment for his/her age group.
4. Cannot have resources which exceed \$10,000.

*Source: Miss. Code Ann. § 43-26-1*

## Chapter 2 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

### Subchapter 1 – ICPC Overview

Rule 2.1.1. *Authority* – MDCPS is the state agency charged with ensuring compliance with the Interstate Compact on the Placement of Children (ICPC or Compact) and all related state and federal laws and regulations.

*Source: Miss. Code Ann. §§ 43-18-3, 43-18-5, 43-26-1*

Rule 2.1.2. *Purpose* – The ICPC is a contractual agreement, overseen by APHSA ([www.aphsa.org](http://www.aphsa.org)), among all fifty states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands, which provides uniform rules and procedures for placing children in homes and facilities across state lines. The Compact is designed to give each child requiring placement across state lines the maximum opportunity for appropriate and desirable care, to ensure that both Sending and Receiving authorities are able to make informed decisions regarding the suitability of a proposed placement, and to establish and maintain jurisdictional responsibility.

*Source: Miss. Code Ann. § 43-18-1*

Rule 2.1.3. *Use of ICPC* – the following Sending Agencies must use the ICPC when they “send, bring, or cause a child to be brought or sent” to another member state:

1. A party state or any officer or employee of a party state;
2. A subdivision of a party state or an officer or employee of the subdivision;
3. A court of a party state; and
4. Any person (including parents and relatives in some instances), corporation, association, or charitable agency of a party state.

*Source: Miss. Code Ann. § 43-18-1*

Rule 2.1.4. *Placements* – The following types of interstate placements must comply with the ICPC:

1. Placements preliminary to an adoption (public, private, and independent);
2. Placements into foster care;
3. Placements with parents and relatives when a parent or relative is not making the placement; and
4. Placements in group homes or residential facilities, including children adjudicated delinquent.

*Exempted Placements* – The following interstate placements/travel are exempt from compliance with the ICPC:

1. Placement in a hospital, medical, or acute mental health facility, excluding residential facilities;
2. Placement into boarding schools or institutions primarily educational in character;
3. Placement made by and to a parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's non-agency guardian who has responsibility- for the child.
  - a. The exemption only applies if the Sending Agency and the placement recipient belong to the identified class of individuals.
4. Placements resulting from the exclusive jurisdiction of a divorce, probate, custody, or paternity court;
5. A court's placement with a parent from whom the child was not removed;
  - a. Exclusion applies if the court has no evidence the parent is unfit, and it seeks no evidence regarding the parent's fitness.
  - b. The court must immediately relinquish its jurisdiction over the child upon placement with the parent.
6. A court's placement with a parent from whom the child was not removed. Exclusion applies if the court has no evidence the parent is unfit, and the court seeks no evidence regarding the parent's fitness. The court must immediately relinquish its jurisdiction over the child upon placement with the parent;
7. Placement of a child from or into Puerto Rico, Guam, or Samoa, which should be completed as a courtesy; and
8. Visits to a Receiving State.
  - a. The purpose of a visit is to provide the child with a social or cultural experience of short duration.
  - b. A visit must have the above purpose and it should last no longer than thirty (30) days unless it begins and ends within the child's school vacation.
    - i. A visit may not be extended or renewed in a manner which

will cause it to exceed thirty (30) days or the child’s school vacation period.

- ii. A child who remains in a “visit” for over thirty (30) days is in an unapproved placement in violation of Article III.
- c. Visits are not recognized as placements; therefore, the safeguards offered by the ICPC will not be fully enacted.

*Source: Miss. Code Ann. § 43-18-1*

Rule 2.1.5. *Conditions for Placement* – A sending agency may not send a child into a receiving state for placement in foster care, an adoptive home, a child-caring agency, or an institution without first providing notice to the appropriate public authorities in the receiving state. The appropriate public authorities in the receiving state must then provide written notification that the placement “does not appear to be contrary to the interests of the child.” MDCPS workers and other Mississippi sending agencies are prohibited from placing children across state lines until the receiving state issues a written approval on ICPC-100A.

*Source: Miss. Code Ann. § 43-18-3; 43-18-5*

Rule 2.1.6. *Penalties for Illegal Interstate Placements* – Interstate placements made in violation of the ICPC constitute a violation of the laws of both the sending and receiving states. Violators are subject to punishment or penalties in both jurisdictions. In addition to liability for any such punishment or penalty, a violation will constitute full and sufficient grounds for suspension or revocation of any license, permit or other legal authorization held by the sending agency which empowers it to place children.

*Source: Miss. Code Ann. § 43-18-3; 43-18-5*

## **Subchapter 2 – ICPC Placements**

Rule 2.2.1. *Child Not Yet Placed* – APHSA ICPC Regulation 2 applies to interstate placements where the child has not yet been placed through an approved home study. A referral packet for these types of interstate placements must contain the following documents:

1. A completed ICPC-100A;
2. An ICPC referral checklist;
3. A cover letter on Agency letterhead containing the type of request, the name of the child, and the reason for the placement;
  - a. The cover letter must contain all pertinent information about the

child.

4. A social summary on Agency letterhead;
  - a. Must include background information and a current assessment of the child.
5. A current case history
6. A current custody order;
  - a. The custody order must be signed and dated within a year of the request packet's submission.
  - b. Any other court documents related to custody must be included in the packet.
7. A financial/medical plan and any supporting documentation;
8. A family service plan;
9. An Individual Educational Plan (IEP), psychological and/or psychiatric assessment, or any document that specifies the child's needs.
10. School records, birth records, immunization records, and a copy of the child's Social Security card, if available;
11. Information on children previously placed with the family, if applicable;
12. An explanation of the child's IV-E eligibility and IV-E documentation, if available;
13. Verification of compliance with the Indian Child Welfare Act (ICWA); and
14. MDCPS Pre-screening Form Reg-2.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.2.2. *Public Adoption Placement* – To initiate an out-of-state public adoptive placement request, the referring MDCPS employee must include the following documents in the referral packet:

1. All documents listed in Rule 3.2.1 and
2. A court order showing termination of both parent's parental rights.

The original referral packet and two (2) copies may be mailed to the ICPC Unit or a complete referral packet may be scanned and emailed to the ICPC Unit.

Source: Miss. Code Ann. §§ 43-18-1, 43-26-1

Rule 2.2.3. *Private Adoption Placement* – A private adoption referral packet must contain the following documents:

1. A completed ICPC-100A;
2. A copy of the Sending Agency’s license or certification;
3. A cover letter on Agency letterhead containing the name of the child, the birth parent(s), and the prospective adoptive parent(s);
  - a. The letter must explain how the child was matched with the prospective adoptive parent(s) and identify the name and address of the person or entity providing post-placement supervision.
4. Either an order showing termination of parental rights or a voluntary relinquishment of rights that was accepted by a court for both the mother and the father, or a copy of the signed consent(s) to relinquish parental rights and a legal risk placement agreement signed by the prospective adoptive parent(s);
5. A certification by a licensed attorney or authorized agent of the private adoption agency that the relinquishments of parental rights comply with the applicable laws of the Sending State or, where applicable, the Receiving State;
  - a. If the Receiving State laws are applied, the packet must contain a waiver of the Sending State’s laws governing relinquishment of parental rights signed by the birth parent(s).
6. Verification of compliance with ICWA;
7. A current case history, if applicable;
8. Information about the child’s history and current needs and abilities;
  - a. If the child is an infant, the packet must contain birth/medical records and a hospital discharge summary.
9. Background information or a social/medical form on the birth parents;
10. A statement indicating why the child is being placed for adoption;
11. Affidavit regarding counseling of the birth parent(s);
  - a. Counseling must be conducted by a licensed social worker affiliated with a licensed child placing adoption agency.

12. A current adoption home study completed by a licensed social worker affiliated with a licensed child placing adoption agency;
  - a. If the home study is more than a year old, the packet must contain an update.
  - b. Must contain a criminal and child abuse background check.
13. An affidavit of expenses charged to the adoptive parent(s);
14. A statement of fees/expenses paid to the birth parent(s);
15. A written statement from the person/entity that will provide post-placement supervision (this may be included in the home study);
16. A statement giving the prospective adoptive parent(s) authority to provide medical care to the child;
17. A statement explaining what will happen to the child if the adoptive placement disrupts; and
18. A prepaid Federal Express envelope.

An original referral packet and two (2) copies must be sent to the ICPC Unit via Federal Express.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.2.4. *Court Referral* – A court having jurisdiction over a child may request an out-of-state placement. To initiate such a request, a court assigned liaison or MDCPS employee must submit the referral packet. A referral packet for a child who is not in the custody of MDCPS must contain the following documents:

1. A completed ICPC-100A signed by the judge or designated judicial officer;
2. A cover letter on court or Agency letterhead;
3. A current social history of the child which must contain
  - a. The child's name,
  - b. The child's date of birth, and
  - c. Any other demographic information included in the court file.
4. Pertinent court documents, including:
  - a. Petitions,

- b. Adjudication of delinquency,
- c. Orders stating the child is neglected or in need of supervision, and
- d. Any other documentation from the court file indicating why the child is before the court.

The original referral packet and two (2) copies may be mailed to the ICPC Unit or a complete referral packet may be scanned and emailed to the ICPC Unit.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.2.5. *Conversion of Intrastate Placements* – An ICPC request must be initiated prior to an *intrastate* placement becoming *interstate* due to a child relocating with an approved foster family. A referring MDCPS employee must include the following documents in the referral packet:

- 1. A completed ICPC-100A, which must contain the family’s new address;
- 2. An ICPC referral checklist;
- 3. A cover letter on Agency letterhead;
- 4. A family functional assessment or current social history of the child;
- 5. A family permanency plan;
- 6. A case history;
- 7. A current custody order and other pertinent court documents;
  - a. The custody order must be signed and dated within a year of the request packet’s submission.
  - b. Other pertinent court documents include petitions and previous custody orders.
- 8. An ICPC medical/financial plan and supporting documents;
- 9. A copy of the child’s IEP, if applicable;
- 10. A copy of the child’s Social Security card and birth certificate;
- 11. Copies of the family’s most recent judicial review court report and court order;
- 12. Copies of any progress reports on the family for the past six (6) months;
- 13. A copy of the family’s foster care license, which must be dated within two

- years of the referral packet's submission;
14. An explanation of the child's IV-E eligibility and IV-E documentation, if available;
  15. MDCPS Pre-screening Form Reg-2;
  16. A valid foster home study/reassessment, which must include the criminal history and fingerprinting results of all applicable family members; and
  17. An ICPC 100-B, if the child is already in the Receiving State, which must contain the family's new address and the date they relocated.

The original referral packet and two (2) copies may be mailed to the ICPC Unit or a complete referral packet may be scanned and emailed to the ICPC Unit.

Upon the filing of an ICPC referral packet described above, the child may move with the approved Mississippi foster family prior to the issuance of a placement decision by the Receiving State ICPC Office.

The Mississippi foster home must meet foster home approval and/or licensure requirements in the Receiving State to maintain placement of the child.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.2.6. *Placement in a Residential Facility* – A referral packet for placement in a residential facility must contain the following documents:

1. A completed ICPC-100A;
2. A court order showing the child's legal status, which must be signed and dated within a year of the packet's submission;
3. Documentation indicating the Sending Agency has authority to place the child;
4. A social summary of the child, which must include background information, reason for the placement, and a current assessment of the child and family;
5. A current case history, if applicable;
6. A copy of the child's case plan and/or psychological evaluation, if applicable;
7. A letter of acceptance from the residential facility;
8. MDCPS Pre-screening Form Reg-2;

9. A statement indicating all options in the Sending State have been exhausted;
10. A financial and medical agreement, which must describe who is responsible for the costs of the placement;
11. An explanation of the child's IV-E eligibility and IV-E documentation, if applicable;
12. A copy of the child's birth certificate;
13. A copy of the child's Social Security card; and
14. A placement disruption agreement.

The original referral packet and two (2) copies may be mailed to the ICPC Unit or a complete referral packet may be scanned and emailed to the ICPC Unit.

The Receiving State ICPC Office must verify the status of the residential treatment facility's license before approving the placement.

Monitoring the Residential Facility

1. The Receiving State ICPC Office must maintain a record of all children placed in a residential facility through the ICPC process.
2. The Receiving state ICPC office must notify the Sending State of any significant change to a residential facility's status that may put the child at risk.
3. A social worker in the residential facility must provide supervision reports to the Sending State for children that are in the state's custody.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.2.7. *Delinquent Children* – In addition to prior approval, a child that has been adjudicated delinquent may not be placed in an interstate residential facility unless the following requirements are met:

1. The child must have been given a court hearing and an opportunity to be heard;
2. The child's parent(s) or guardian(s) must have been provided notice of the hearing; and
3. The court must have found the following:
  - a. Equivalent facilities are not available in the Sending Agency's jurisdiction and

- b. Institutional care in another jurisdiction is in the best interest of the child and will not produce undue hardship.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.2.8. *Priority/Expedited Placements* – An expedited placement decision can be requested if a child is being placed with a biological parent, stepparent, grandparent, adult uncle or aunt, adult brother or sister, or child’s guardian and one or more of the following circumstances exists:

1. The child is unexpectedly dependent due to the sudden or recent incarceration, incapacitation, or death of a parent or guardian;
2. The child is four years old or younger;
  - a. Older siblings who will be placed with the same proposed placement are included.
3. The court finds any child in the sibling group sought to be placed has a substantial relationship with the proposed placement; or
4. The child is currently in an emergency placement.

An expedited placement cannot be made if:

1. The child has been placed in the Receiving State in violation of the ICPC;
2. The child is being placed in a foster or adoptive home; or
3. The court places the child with a parent from whom the child was not removed.

A referral packet for an expedited interstate placement must contain the following:

1. All documents listed in Rule 3.2.1 except MDCPS Pre-screening Form Reg-2;
2. ICPC Form 101 (Sending Agency’s Regulation #7 – “Expedited Placement Decision Home Study Request and Statement of Interest/Case Manager’s Signed Statement”)
3. MDCPS Pre-screening Form Reg-7; and
4. An Order of Compliance entered by the court from the Sending State with jurisdiction over the case which must:
  - a. Specify which of the circumstances listed in this Rule applies for an expedited placement;

- b. Contain the name, mailing address, e-mail address, telephone number, and fax number of the clerk of court or a designated court administrator; and
- c. Require the Sending Agency to complete ICPC form 101

#### Timeframes for Processing Request

The Sending and Receiving states must follow the following timeframes:

1. The Sending State court must send a copy of its order to the Sending State Agency within two (2) business days of considering the matter.
2. The Sending Agency must send the request packet to the Sending State ICPC office within three (3) business days of receipt of the court order.
3. The Sending State ICPC office must forward the completed request packet to the Receiving State ICPC office within two business (2) days of receiving it.
4. The Receiving State ICPC office must send the request packet to the local Receiving Agency within two (2) business days of receipt of the packet.
5. The local Receiving Agency has fifteen (15) business days from receipt of the packet to return a completed home study to the Receiving State ICPC office.
6. The Receiving State ICPC Office must provide a written report and a completed ICPC-100A to the Sending State ICPC office within three (3) business days of receipt of the home study.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

### **Subchapter 3 – ICPC Assessments and Management**

Rule 2.3.1. *Reports of Assessment or Home Study* – The Receiving State must complete a home study or assessment of the proposed placement and provide the Sending State with a report addressing the extent the placement meets the child’s needs. The home study must be conducted and the report provided to the Sending State within the following timeframes:

1. Requests under Regulations 1 and 2 sixty (60) calendar days from receipt of referral packet.
  - a. If the potential placement has not completed required education and training by the time the home study is conducted, the report must include an anticipated date of completion.

2. Expedited requests under Regulation 7: twenty (20) calendar days from receipt of referral packet.
3. Preliminary report of a placement status: thirty (30) calendar days from receipt of referral packet.
  - a. Preliminary reports must be on Agency letterhead.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.3.2. *Reports Received Without a Decision* – A home study report may include the Receiving State’s final approval or denial of the placement on ICPC-100A. A report issued without a decision is considered a “Notice of the Circumstances” of the placement in the Receiving State. If a child in the custody/guardianship of MDCPS is placed with an out-of-state home based on such a study:

1. the placement will not be considered an approved placement;
2. the placement will be considered as placing the child “at-risk”; and
3. the Receiving State is under no obligation to provide services to the child.

If the placement is made without approval, the Sending Agency must submit a signed written notice to the ICPC office which contains the following:

1. The name, date of birth, and current placement location of the child;
2. The name of the placement in the Receiving State;
3. The date the placement was made;
4. The circumstances surrounding the placement; and
5. A statement acknowledging the child was placed in violation of Article III and is now in “at risk” status and which acknowledges the Sending Agency is responsible for the child.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.3.3. *Timeframe for Final Decision by Receiving State* – The Receiving State must provide a final approval or denial of the placement in the form of a signed ICPC-100A as follows:

1. A final decision for requests under Regulations 1 and 2 must be provided within 180 calendar days of the ICPC office’s receipt of the referral packet.
  - a. If a Regulation 2 request is denied, the Sending Agency may request reconsideration with or without a new home study within ninety (90)

days of the date ICPC-100A was signed.

2. A final decision for expedited requests under Regulation 7 must be provided within twenty (20) calendar days of the ICPC office's receipt of the completed referral packet.
3. A final decision for residential facility requests under Regulation 4 must be provided within five (5) business days of the ICPC office's receipt of a completed referral packet.
4. A final decision for private adoption requests under Regulation 12 must be provided within five (5) business days of the ICPC office's receipt of a completed referral packet.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.3.4. *Sending Agency Authority* – If a request under regulations 2 or 4 is approved, the Sending Agency has the authority to determine whether the placement will be used.

The Receiving State's approval of a Regulation 2 placement expires six (6) months from the date ICPC-100A is signed by the Receiving State.

The Receiving State's approval of a Regulation 4 placement expires thirty (30) days from the date ICPC-100A is signed by the Receiving State.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.3.5. *Jurisdiction and Responsibilities* – During an ICPC placement, the Sending Agency retains jurisdiction to determine all matters related to a child's custody, supervision, care, and disposition, including the power to transfer the child to another placement/location or have the child returned to the Sending State.

The Sending Agency's jurisdiction continues until one of the following events occurs:

1. The child is adopted;
2. The child reaches the Sending State's age of majority;
3. The child becomes self-supporting; or
4. The child is discharged. The Receiving State must agree with a decision to discharge the child.

The Sending Agency remains financially responsible for the support and maintenance of the child during an out-of-state placement.

The Sending Agency remains responsible for the child's ongoing safety, well-being, and case planning throughout the duration of the out-of-state placement.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.3.6. *Completion of ICPC-100B* – The Sending or Receiving Agency must complete an ICPC-100B and submit it to the state ICPC office when any of the following events occur:

1. A child is placed in the Receiving State;
  - a. If the child is being placed in a residential facility, ICPC-100B must be provided to the Sending State ICPC office within five (5) business days of the child's placement.
  - b. If the child is being placed for adoption under Regulation 12, ICPC-100B must be provided to the Sending State ICPC office within five (5) business days of the child's placement.
2. There is a change in purpose in an existing placement;
3. An ICPC request is withdrawn, cancelled, or an approved placement will not be used;
4. A placement is terminated; or
5. An ICPC case is closed.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.3.7. *Supervision Following Placement* – The Receiving State must begin supervising a placement once the ICPC-100B is received or the state ICPC office is otherwise notified that the child has been placed in the state. Supervision must meet the following requirements:

1. It must begin no later than thirty (30) calendar days from the date the child is placed or thirty (30) calendar days from the date the Receiving State is notified of the placement.
2. It must include monthly face-to-face visits with the child, with a majority of the visits occurring in the child's home.
3. When Mississippi is the Receiving State, the ICPC office will forward ICPC-100B to the assigned county employee who will then open a supervision case.
4. The Receiving State must notify the Sending State ICPC Office in writing of any unmet needs of the child.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.3.8. *Supervision Reports* – The supervising worker must provide a Supervision Report at least once every ninety (90) calendar days following receipt of ICPC-100B by the state ICPC office unless a different timeframe is set for Supervision Reports on ICPC-100A. The Supervision Report must contain the following:

1. The date and location of all visits with the child since the last Report;
2. A summary of the child’s circumstances, including a statement on the child’s safety and well-being;
3. A summary of the child’s academic performance, if applicable, including a copy of the child’s report card, IEP, or other educational evaluation;
4. A summary of the child’s health and medical status, including the dates of any health-related appointments, the names of any providers, and copies of any health-related evaluations or reports;
5. An assessment of the placement and caretakers;
6. A description of any unmet needs; and
7. The supervising worker’s recommendation on continuation of the placement, if applicable.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.3.9. *Termination of Supervision* – Supervision must continue until one of the following events occurs:

1. The child reaches the Sending State’s age of majority;
2. The child becomes legally emancipated;
3. The child’s adoption is finalized;
4. Legal custody is granted to a caregiver or a parent and the Sending State terminates its jurisdiction;
5. The child no longer resides at the home approved for placement;
6. The Sending State relinquishes jurisdiction over the child;
7. Legal guardianship is granted to the child’s caregiver in the Receiving State;  
or

8. The Sending State requests in writing that supervision be discontinued, and the Receiving State agrees.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.3.10. *Return of Child to the Sending State* – The Receiving State may request the return of a child who is in the state when a placement is denied or may withdraw its approval of a placement and request the return of a child. If return is requested:

1. The Sending State has five (5) business days to remove the child unless another timeframe is agreed upon by both state’s ICPC Offices.
2. The Sending State may propose an alternate placement if return is requested. The Receiving State must approve the alternative placement before the child can be placed in the home.

The Receiving State may withdraw its request for removal if the Sending State arranges services which solve the problem.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.3.11. *Closure of ICPC Case* – When Mississippi is the Sending State and the ICPC case is closed due to a court action, MDCPS will submit ICPC-100B and a copy of the court order to the ICPC office within thirty (30) calendar days of the court action. The court order must be signed and dated, and the Receiving State must agree to close the case.

*Source: Miss. Code Ann. §§ 43-18-1, 43-26-1*

Rule 2.3.12. *Border Agreements* – MDCPS may enter into border agreements with the applicable state agency of states that border Mississippi, as may be determined by and agreed to between MDCPS and the applicable border state agency in order to facilitate out of state placements in a timely manner.

*Source: Miss. Code Ann. §§ 43-18-11, 43-26-1*

## Chapter 3 INDIAN CHILD WELFARE ACT (ICWA)

### Subchapter 1 – ICWA Overview

Rule 3.1.1. *ICWA Overview* – The Federal Indian Child Welfare Act (ICWA) was passed in 1978, granting Native American tribes exclusive jurisdiction in child welfare cases involving Native American children, referred to in the Act as an Indian Child. This Act ensures that the heritage of Native American children will be recognized, protected, and monitored in and out of state. ICWA provides for the Indian Tribal Council to have priority jurisdiction in the matter of custody and guardianship in the case of any child of Native American heritage.

The tribal lands of the Mississippi Band of Choctaw Indians are found in eight counties in Mississippi: Neshoba, Attala, Jones, Kemper, Leake, Newton, Scott, and Winston.

*Source:* *Miss. Code Ann. § 43-26-3; 25 U.S.C. §§ 1901 et seq.; 25 C.F.R. §§ 223.1-144*

Rule 3.1.2. *Jurisdiction Over an Indian Child*

Generally. A tribal court may assume jurisdiction over any Indian Child, whether the Indian Child lives on or off a reservation, at any time. Any Native American Tribe to which a child belongs has the right to accept or deny jurisdiction of the said child and to help with placement resources.

Determination of heritage. MDCPS will determine whether or not a child has Native American heritage upon making contact with a family. Once MDCPS determines a child has Native American heritage, the appropriate Native American Tribe will be notified so that the Tribe may accept or deny jurisdiction of said child.

Allegations occurring on Native American tribal lands. MDCPS has no jurisdiction to investigate allegations of abuse or neglect occurring on Native American tribal lands without tribal consent.

*Source:* *Miss. Code Ann. § 43-26-3; 25 U.S.C. §§ 1901 et seq.; 25 C.F.R. §§ 223.1-144*

Rule 3.1.3. *Reports on Native American children* – MDCPS has and will continue to receive reports of abuse or neglect involving Native American children, both on and off of tribal lands. When Mississippi Centralized Intake & Assessment (“MCIA”) receives such a report, the reporter will be asked designated questions to determine whether the child falls under the jurisdiction of a Native American tribe.

*Source:* *Miss. Code Ann. § 43-26-3; 25 U.S.C. §§ 1901 et seq.; 25 C.F.R. §§ 223.1-144*

Rule 3.1.4. *Active Efforts Defined; Required* – If a child is determined to be a Native American child, Active Efforts to keep the child in the home are required. Active Efforts

means: affirmative, active, thorough, and timely efforts that are intended primarily to maintain or reunite and Indian Child with his or her family.

To the maximum extent possible, Active Efforts will be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian Child's Tribe and will be conducted in partnership with the Indian Child, parents, extended family members, Indian custodians, and Tribe.

Active Efforts applies to both remedial and rehabilitative in-home services to the family prior to the removal of a Native American child from his or her parent or Native American custodian, and/or an intensive effort to reunify a Native American child with his or her parent or Native American custodian. Active efforts will involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. Active efforts will be tailored to the facts and circumstances of the case and may include:

1. Conducting a comprehensive assessment of the circumstances of the Indian Child's family, with a focus on safe reunification as the most desirable goal;
2. Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
3. Identifying, notifying, and inviting representatives of the Indian Child's Tribe to participate in providing support and services to the Indian Child's family and in family team meetings, permanency planning, and resolution of placement issues;
4. Conducting or causing to be conducted a diligent search for the Indian Child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian Child and the Indian Child's parents;
5. Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;
6. Taking steps to keep siblings together whenever possible;
7. Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian Child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
8. Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;

9. Monitoring progress and participation in services;
10. Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;
11. Providing post-reunification services and monitoring;
12. Any other activities or services as deemed appropriate or necessary by MDCPS staff, policies and procedures.

*Source: Miss. Code Ann. § 43-26-3; 25 U.S.C. §§ 1901 et seq.; 25 C.F.R. §§ 223.1-144*

Rule 3.1.5. *Applicability of other federal statutes* – MEPA, Title V, and ICWA. Multi-Ethnic Placement Act (MEPA) and Title VI do not impact the placement preferences for an American Native American child who is a member of or is eligible for membership in a federally recognized tribe. MEPA and Title VI apply fully to American Native American children who are not covered under ICWA.

*Source: Miss. Code Ann. § 43-26-3; 25 U.S.C. §§ 1901 et seq.; 25 C.F.R. §§ 223.1-144*

## **Subchapter 2 – Children Living on Tribal Land**

Rule 3.2.1. *Reports of Child Living on Tribal Land* – If a child is identified at Intake as a member of the Mississippi Band of Choctaw Indians, or another federally recognized Native American tribe, MCIA will screen the report to the county where the child resides. MDCPS will notify the appropriate Tribal Council and provide them with the allegations and all identifying information. If the Tribal Council does not wish to retain jurisdiction and requests the county to investigate the allegations, the county will follow normal investigative procedures. If MDCPS is providing services and the child holds membership in a tribe or is eligible for tribal membership, the tribe may assume jurisdiction at any point in the service provision process, including the investigation process and foster care services

Rule 3.2.2 *Notifications to the Tribal Council* – MDCPS will immediately notify the tribe of any child-custody proceeding involving a Native American child. For ICWA purposes, each of the following is considered a separate child-custody proceeding and requires separate notice. Child-custody proceedings are defined as:

1. Non-emergency foster care placement;
2. Termination of parental rights;
3. Pre-adoptive placement; and
4. Adoptive placement.

Notice to the Tribal Council must be in clear and understandable language and include the following:

1. The child's name, birthdate, and birthplace;
2. All names known (including maiden, married, and former names or aliases) of the parents, the birthdates and birthplaces of the parents, and Tribal enrollment numbers if known;
3. If known, the names, birthdates, birthplaces, and Tribal enrollment information of other direct lineal ancestors of the child, such as grandparents;
4. The name of each Indian Tribe in which the child is a member (or may be eligible for membership if a biological parent is a member);
5. A copy of the petition, complaint, or other document by which the child custody proceeding was initiated and, if a hearing has been scheduled, information on the date, time, and location of the hearing;
6. Statements setting out the following:
  - a. The name of the petitioner and the name and address of petitioner's attorney;
  - b. The right of any parent or Indian custodian of the child, if not already a party to the child-custody proceeding, to intervene in the proceedings.
  - c. The Indian Tribe's right to intervene at any time in a State-court proceeding for the foster-care placement of or termination of parental rights to an Indian child.
  - d. That, if the child's parent or Indian custodian is unable to afford counsel based on a determination of indigency by the court, the parent or Indian custodian has the right to court-appointed counsel.
  - e. The right to be granted, upon request, up to 20 additional days to prepare for the child-custody proceedings.
  - f. The right of the parent or Indian custodian and the Indian child's Tribe to petition the court for transfer of the foster-care-placement or termination-of parental rights proceeding to Tribal court as provided by 25 U.S.C. 1911 and § 23.115.
  - g. The mailing addresses and telephone numbers of the court and information related to all parties to the child-custody proceeding and individuals notified under this section.

- h. The potential legal consequences of the child-custody proceedings on the future parental and custodial rights of the parent or Indian custodian.
- i. That all parties notified must keep confidential the information contained in the notice and the notice should not be handled by anyone not needing the information to exercise rights under ICWA.

Notice will be provided immediately to the registered agent for service of notice by certified letter, return receipt requested, to the appropriate Tribe when a Choctaw child, or other Native American child, is taken into MDCPS custody. Copies of notices will be sent to the appropriate Regional Director for the Bureau of Indian Affairs (BIA) either by registered or certified mail with return receipt requested or by personal delivery.

*Source: Miss. Code Ann. § 43-26-3; 25 U.S.C. §§ 1901 et seq.; 25 C.F.R. §§ 223.1-144*

Rule 3.2.3 *Notification when tribal membership cannot be ascertained* – If there is reason to know the child is a member of a Tribe or eligible for membership in a Tribe but the membership cannot be ascertained, notice will be sent directly to the appropriate BIA Regional Director.

*Source: Miss. Code Ann. § 43-26-3; 25 U.S.C. §§ 1901 et seq.; 25 C.F.R. §§ 223.1-144*

Rule 3.2.4. *Timing of child-custody proceeding after notice* – A child-custody proceeding will not be held until at least ten (10) days after the receipt of notice by the registered agent. Upon receipt of notice, the Secretary for the BIA will make reasonable documented efforts to locate and notify the child’s Tribe and the child’s parent(s) or custodian(s). The Secretary has 15 days after the receipt of notice to notify the child’s Tribe and parent(s) and send a copy of the notice to the court. If the Secretary is unable to locate the parent(s) or custodian(s) or verify the child’s Tribal membership, the Secretary will inform the court. The Secretary will also inform the court how much more time is necessary to complete the search. A complete list of Tribes and contact information for ICWA purposes can be found at <https://www.bia.gov/bia/ois/dhs/icwa>.

*Source: Miss. Code Ann. § 43-26-3; 25 U.S.C. §§ 1901 et seq.; 25 C.F.R. §§ 223.1-144*

Rule 3.2.5. *Voluntary placement or in-home services* – If the case is a voluntary placement or in-home services case, MDCPS will notify the applicable Tribe, though a certified letter is not required.

*Source: Miss. Code Ann. § 43-26-3; 25 U.S.C. §§ 1901 et seq.; 25 C.F.R. §§ 223.1-144*

Rule 3.2.6. *Adoption* – If the case is an adoption, a copy of the final adoption decree will be sent to the BIA Central Office in Washington, D.C.

*Source:* *Miss. Code Ann. § 43-26-3; 25 U.S.C. §§ 1901 et seq.; 25 C.F.R. §§ 223.1-144*

### **Subchapter 3 – Emergency Removal of Indian Child**

Rule 3.3.1. *Emergency Removal* – Any emergency removal or placement of an Indian Child under State law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

*Source:* *Miss. Code Ann. § 43-26-3; 25 U.S.C. §§ 1901 et seq.; 25 C.F.R. §§ 223.1-144*

Rule 3.3.2. *Actions by State Court* – The State court must:

1. Make a finding on the record that the emergency removal or placement is necessary to prevent imminent physical damage or harm to the child;
2. Promptly hold a hearing on whether the emergency removal or placement continues to be necessary whenever new information indicates that the emergency situation has ended;
3. At any court hearing during the emergency proceeding, determine whether the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child;
4. Immediately terminate (or ensure that the Agency immediately terminates) the emergency proceeding once the court or Agency possesses sufficient evidence to determine that the emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

*Source:* *Miss. Code Ann. § 43-26-3; 25 U.S.C. §§ 1901 et seq.; 25 C.F.R. §§ 223.1-144*

Rule 3.3.3. *Termination of emergency proceeding* – An emergency proceeding can be terminated by one or more of the following actions:

1. Initiation of a child-custody proceeding subject to the provisions of ICWA;
2. Transfer of the child to the jurisdiction of the appropriate Indian Tribe; or
3. Restoring the child to the parent or Indian custodian.

*Source:* *Miss. Code Ann. § 43-26-3; 25 U.S.C. §§ 1901 et seq.; 25 C.F.R. §§ 223.1-144*

Rule 3.3.4. *Petition for emergency removal* – A petition for a court order authorizing the emergency removal or continued emergency placement, or its accompanying documents, should contain a statement of the risk of imminent physical damage or

harm to the Indian child and any evidence that the emergency removal or placement continues to be necessary to prevent such imminent physical damage or harm to the child. The petition or its accompanying documents should also contain the following information:

1. The name, age, and last known address of the Indian Child;
2. The name and address of the child's parents and Indian custodians, if any;
3. The steps taken to provide notice to the child's parents, custodians, and Tribe about the emergency proceeding;
4. If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate BIA Regional Director (see [www.bia.gov](http://www.bia.gov));
5. The residence and the domicile of the Indian Child;
6. If either the residence or the domicile of the Indian Child is believed to be on a reservation or in an Alaska Native village, the name of the Tribe affiliated with that reservation or village;
7. The Tribal affiliation of the child and of the parents or Indian custodians;
8. A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;
9. If the child is believed to reside or be domiciled on a reservation where the Tribe exercises exclusive jurisdiction over child-custody matters, a statement of efforts that have been made and are being made to contact the Tribe and transfer the child to the Tribe's jurisdiction; and a statement of the efforts that have been taken to assist the parents or Indian custodians so the Indian Child may safely be returned to their custody.

*Source: Miss. Code Ann. § 43-26-3; 25 U.S.C. §§ 1901 et seq.; 25 C.F.R. §§ 223.1-144*

Rule 3.3.5. *Continuance of emergency proceeding* – An emergency proceeding regarding an Indian child should not be continued for more than 30 days unless the court makes the following determinations:

1. Restoring the child to the parent or Indian custodian would subject the child to imminent physical damage or harm;
2. The court has been unable to transfer the proceeding to the jurisdiction of the appropriate Indian Tribe; and

3. It has not been possible to initiate a child-custody proceeding.

*Source: Miss. Code Ann. § 43-26-3; 25 U.S.C. §§ 1901 et seq.; 25 C.F.R. §§ 223.1-144*