

§3948. Placement of Indian children

1. Adoptive placements; preferences. In an adoptive placement of an Indian child under the laws of this State, placement preference must be given, in the absence of good cause to the contrary, in descending order, as listed below:

- A. An extended family member of the Indian child; [PL 2023, c. 359, §5 (NEW).]
- B. Another member or citizen of the Indian child's tribe; [PL 2023, c. 359, §5 (NEW).]
- C. A member or citizen of an Indian tribe in which the Indian child is eligible for membership or citizenship, but that is not the Indian child's tribe; [PL 2023, c. 359, §5 (NEW).]
- D. Another Indian with whom the Indian child has a relationship; or [PL 2023, c. 359, §5 (NEW).]
- E. Another Indian from a tribe that is culturally similar to or linguistically connected to the Indian child's tribe. [PL 2023, c. 359, §5 (NEW).]

[PL 2023, c. 359, §5 (NEW).]

2. Foster care or preadoptive placements; criteria; preferences. An Indian child accepted for foster care placement or preadoptive placement must be placed in the least restrictive setting that most approximates a family and in which that Indian child's special needs, if any, may be met. The Indian child must also be placed within reasonable proximity to that Indian child's home, taking into account any special needs of the child. In any foster care placement or preadoptive placement, placement preference must be given, in the absence of good cause to the contrary, in descending order, as listed below:

- A. An extended family member of the Indian child; [PL 2023, c. 359, §5 (NEW).]
- B. A foster home licensed, approved or specified by the Indian child's tribe; [PL 2023, c. 359, §5 (NEW).]
- C. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or [PL 2023, c. 359, §5 (NEW).]
- D. An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs. [PL 2023, c. 359, §5 (NEW).]

[PL 2023, c. 359, §5 (NEW).]

3. Good cause to deviate from placement preferences. The party seeking departure from the placement preferences under this section bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preferences. A court's determination of good cause to depart from the placement preferences must be made on the record or in writing and may be based on one or more of the following considerations:

- A. The request of one or both of the Indian child's parents, if they attest that they have reviewed the placement options, if any, that comply with the order of preference; [PL 2023, c. 359, §5 (NEW).]
- B. The request of the Indian child, if the Indian child is of sufficient age and capacity to understand the decision that is being made; [PL 2023, c. 359, §5 (NEW).]
- C. The presence of a sibling attachment that can be maintained only through a particular placement; [PL 2023, c. 359, §5 (NEW).]
- D. The extraordinary physical, mental or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live; or [PL 2023, c. 359, §5 (NEW).]

E. The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the preference criteria, but none has been located. For purposes of a determination under this paragraph, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties. [PL 2023, c. 359, §5 (NEW).]

A placement may not depart from the preferences under this section based on the socioeconomic status of any placement relative to another placement. A placement may not depart from the preferences based solely on ordinary bonding or attachment that developed from time spent in a nonpreferred placement that was made in violation of this Act.

[PL 2023, c. 359, §5 (NEW).]

4. Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences. In the case of a placement under subsection 1 or 2, if the Indian child's tribe establishes a different order of preference by resolution, the agency or court effecting the placement shall follow that order as long as the placement is the least restrictive setting appropriate to the particular needs of the Indian child, as provided in subsection 2. When appropriate, the preference of the Indian child or parent must be considered. When a consenting parent evidences a desire for anonymity, the court or agency must give weight to such desire in applying the preferences.

[PL 2023, c. 359, §5 (NEW).]

5. Social and cultural standards applicable. The standards to be applied in meeting the preference requirements of this section must be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

[PL 2023, c. 359, §5 (NEW).]

6. Record of placement; availability. A record of each placement under this section of an Indian child must be maintained by the State, including evidence of the efforts made to comply with the order of preference specified in this section. The record must be made available at any time upon the request of the United States Secretary of the Interior or the Indian child's tribe.

[PL 2023, c. 359, §5 (NEW).]

SECTION HISTORY

PL 2023, c. 359, §5 (NEW).

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