

Differences between Federal Indian Child Welfare Act and Wyoming Indian Child Welfare Act

Provision	Federal ICWA	State ICWA*	Which law controls?
Qualified Expert Witness	<p>(e) Foster care placements: Provide clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent/Indian custodian is likely to result in serious emotional or physical damage to the child</p> <p>(f) Termination of parental rights: Provide proof beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent/Indian custodian is likely to result in serious emotional or physical damage to the child</p> <p>25 USC 1912(e), (f)</p>	<p>For purposes of (e) and (f), the testimony of qualified expert witnesses <i>may</i> be used to meet the evidentiary burden specified.</p> <p>W.S. 14-6-704(g)</p>	Federal law
Notice of Pending Court Proceedings to Tribe, Parents/Indian Custodian	<p>Must be sent by <i>registered</i> mail</p> <p>25 USC 1912(a)</p> <p><i>but see</i> 25 CFR 23.11 (Federal regulations): notice may be sent via registered <i>or</i> certified mail</p>	<p>Must be sent by <i>registered</i> mail</p> <p>W.S. 14-6-704(a)</p> <p>If a statute requires registered mail, certified mail with proof of mailing is sufficient</p> <p>W.S. 1-6-111</p>	Under both systems, either registered or certified mail will suffice
Placement preferences (foster/shelter care and preadoptive placements)	<p>In a foster care or preadoptive placement, preference shall be given, in the absence of good cause to the contrary, to a placement with:</p> <p>(i) a member of the Indian child's extended family</p> <p>(ii) <i>a foster home licensed, approved, or specified by the Indian child's tribe;</i></p> <p>(iii) <i>an Indian foster home licensed or approved by an authorized non-Indian licensing authority;</i> or</p> <p>(iv) an institution for children approved by an Indian Tribe or operated by an Indian organization...</p> <p>25 USC 1915(b)</p>	<p>In any shelter care or preadoptive placement, preference shall be given, in the absence of good cause to the contrary, to a placement with, in the following order:</p> <p>(i) a member of the Indian child's extended family</p> <p>(ii) <i>other members of the Indian child's tribe</i></p> <p>(iii) <i>other Indian families;</i> or</p> <p>(iv) an institution for children approved by an Indian Tribe or operated by an Indian organization...</p> <p>W.S. 14-6-707(b)</p>	<p>Likely State law, but may require a case-by-case analysis to determine which placement provides more protection to the parent or Indian Custodian;</p> <p>However, if the Tribe has established a different order, must follow the Tribe's preferences</p> <p>25 USC 1915(c); W.S. 14-6-707(c)</p>

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Placement preferences (adoptive placement)	<p>In an adoptive placement, preference shall be given, in the absence of good cause to the contrary, to a placement with:</p> <ul style="list-style-type: none"> (i) a member of the Indian child's extended family (ii) other members of the Indian child's tribe; or (iii) other Indian families. <p>25 USC 1915(a)</p>	<p>In any adoptive placement, in the absence of good cause to the contrary, preference shall be given to a placement with, in the following order:</p> <ul style="list-style-type: none"> (i) a member of the Indian child's extended family (ii) other members of the Indian child's tribe (iii) other Indian families; or (iv) <i>any other placement.</i> <p>W.S. 14-6-707(a)</p>	<p>Will likely require a case-by-case analysis to determine which placement provides more protection to the parent or Indian Custodian;</p> <p>If the Tribe has established a different order, must follow the Tribe's preferences</p> <p>25 USC 1915(c); W.S. 14-6-707(c)</p> <p>Note, State law will not require the Court to find "good cause" to deviate from the placement preference since the State law includes "any other placement," unless a finding of "good cause" is necessary to deviate from a Tribe's preference list. W.S. 14-6-707(a)</p>

*Note: State law applies to cases *filed* after July 1, 2023.