

## Module 8: Placement Preferences

### Module 8: Placement Preferences

- Applicability
- Adoptive Placements
- Foster Care & Preadoptive Placements
- Good Cause to Depart

*This module addresses a crux of ICWA's protections – to help keep the Indian child with extended family or the community.*

## Module 8: Placement Preferences Applicability

- Placement preferences apply in any preadoptive, adoptive, or foster-care placement (voluntary or involuntary) of an Indian child
  - In voluntary proceeding, where a consenting parent requests anonymity:
    - The court must give weight to the request for anonymity in applying the preferences
  - Court must apply the placement preferences, unless there is a determination on the record that good cause exists to not apply those placement preferences

## Module 8: Placement Preferences Adoptive Placements

- Placement Preferences – Adoptions
  - If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply
  - If the Tribe has not established a different order, preference must be given in descending order to placement of the child with:
    - (1) A member of the Indian child's extended family;
    - (2) Other members of the Indian child's Tribe; or
    - (3) Other Indian families
  - The court must, where appropriate, also consider the placement preference of the Indian child or Indian child's parent

## Module 8: Placement Preferences Foster Care & Preadoptive Placements

- Placement Preferences – Foster Care & Preadoptive
  - The child must be placed in the least-restrictive setting that:
    - (1) Most approximates a family, taking into consideration sibling attachment;
    - (2) Allows the Indian child's special needs (if any) to be met; and
    - (3) Is in reasonable proximity to the Indian child's home, extended family, or siblings
  - If the Indian child's Tribe has established by resolution a different order of preference than that specified in ICWA, the Tribe's placement preferences apply

## Module 8: Placement Preferences Foster Care & Preadoptive Placements

- Placement Preferences – Foster Care & Preadoptive (cont'd)
  - If the Tribe has not established a different order, preference must be given in descending order to placement of the child with:
    - (1) A member of the Indian child's extended family;
    - (2) A foster home that is licensed, approved, or specified by the Indian child's Tribe;
    - (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
    - (4) An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child's needs
  - The court must, where appropriate, also consider the preference of the Indian child or the Indian child's parent

## Module 8: Placement Preferences Good Cause to Depart

- Placement Preferences – Good Cause to Depart
  - If any party asserts that good cause exists not to follow the placement preferences, the reasons for that belief or assertion must be stated orally on the record or provided in writing to the parties to the child-custody proceeding and the court
  - The party seeking departure from the placement preferences should bear the burden of proving by clear and convincing evidence that there is “good cause” to depart from the placement preferences
  - The court’s determination of good cause to depart from the placement preferences must be made on the record or in writing

## Module 8: Placement Preferences Good Cause to Depart

- Placement Preferences – Good Cause to Depart (cont'd)
  - Court's determination should be based on one or more of the following considerations:
    - (1) 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;
    - (2) The request of the child, if the child is of sufficient age and capacity to understand the decision that is being made;
    - (3) The presence of a sibling attachment that can be maintained only through a particular placement;
    - (continued...)

## Module 8: Placement Preferences Good Cause to Depart

- Placement Preferences – Good Cause to Depart (cont'd)
  - Court's determination should be based on one or more of the following considerations: (cont'd)
    - (4) The extraordinary physical, mental, or emotional needs of the Indian child
      - E.g., Specialized treatment services that may be unavailable in the community where families who meet the placement preferences live;
    - (5) The unavailability of a suitable preferred placement after court determines a diligent search was conducted, but none has been located.
      - For purposes of this analysis, the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community



## Module 8: Placement Preferences Good Cause to Depart

- Placement Preferences – Good Cause to Depart (cont'd)
  - Limitations on Court's Determination
    - A placement may not depart from the preferences 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 flowed from time spent in a non-preferred placement that was made in violation of ICWA

## Module 8: Placement Preferences

### Key Points to Remember

- Placement preferences apply in involuntary **and** voluntary Indian child proceedings
  - If the Tribe has not established placement preferences by resolution, ICWA's placement preferences apply
  - See the rule for the ICWA placement preferences applicable to foster-care placements and those applicable to adoptive placements
- Court **must** apply the placement preferences, unless there is a determination on the record that good cause exists to deviate
- The rule limits what may and may not be considered as "good cause"