Trainer’s Guide

“Let the Spirit Lead...”
ICWA: In the Best Interest of the Indian Child

VERSION 1 | January 2015
“Let the Spirit Lead…”
ICWA: In the Best Interest of the Indian Child

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“Let the Spirit Lead...”  
ICWA: In the Best Interest of the Indian Child  
Trainer’s Guide

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Acknowledgments

This curriculum is dedicated to all those who paved the way for us and our children, and to the social workers, tribal and non-tribal, who work with our children and families to provide better outcomes for them.
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“Let the Spirit Lead...”
ICWA: In the Best Interest of the Indian Child

INTRODUCTION

The Congress hereby declared that it is the policy of this Nation 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, and by providing for assistance to Indian tribes in the operation of child and family service programs.

PL 95-608, 95th Congress, 25 USC 1902
Nov. 8, 1978

“Let the Spirit Lead...” ICWA: In The Best Interest of the Indian Child is part of a continuum of ICWA-related curricula designed to meet the diverse regional and cultural needs of American Indian communities throughout California. “Let the Spirit Lead...” meets and exceeds the statewide training requirements regarding the competencies and standardized learning objectives for the California Common Core Curricula for Child Welfare Workers for the topic entitled Indian Child Welfare Act (ICWA).

The most critical aspects of ICWA-related curricula concern the historical significance of ICWA and the importance of building engagement skills for deepening relationships with tribal people and communities. In addition to the historical, philosophical, and legal background of ICWA, “Let the Spirit Lead...” includes engagement strategies that encourage participation by local and regional tribal representatives when training at the local level. The training incorporates a cultural immersion experience as a crucial part of learning, addressing physical, cognitive, emotional, and spiritual aspects of life from a tribal cultural perspective. Transfers of learning are ensured through training elements that engage participants in sounds and the physical senses of movement, touch, and sharing food. Engaging multiple senses in the learning process supports intellectual understanding, emotional processing, and spiritual engagement.
Intended Audience

This training targets the numerous people working to create successful outcomes for tribal youth in dependency: child welfare social workers, supervisors, managers, contract agency staff, advocates, attorneys, judges, law enforcement, mental health services providers, youth advocates, elected tribal officials, tribal leaders, tribal social workers, tribal youth, parents and caregivers and community partners. The choice of the designation of ‘participant’ in lieu of ‘trainee’ emphasizes the collaborative nature of learning.

Course Description

“Let the Spirit Lead...ICWA: In the Best Interest of the Indian Child” is intended to provide social workers with foundational knowledge of the Indian Child Welfare Act. The training provides a brief historical context of why and how the act was passed, and the purpose and requirements of ICWA, with special emphasis on noticing and inquiry, active efforts, concurrent planning, and expert witnesses. A brief overview of tribal customary adoption as a permanent plan option recognized under California law is included. Participants will learn basic engagement strategies for working with American Indian children and families including important aspects of cultural and historical self-identification. Several important activities in this curriculum involve accessing the emotional responses of the participants to ensure best practices in working with Indian children and families.

Values and Ideals

This ICWA training curriculum reflects the values and ideals rooted in Native American culture, history, and teachings. Native American values and ideals are essential to this curriculum to improve the knowledge, skills, and practices of child welfare workers in order to achieve better outcomes for Native American foster youth and their families.

“In our every deliberation, we must consider the impact of our decisions on the next seven generations.”
—From the Great Law of the Iroquois Confederacy

Values

1. Cultural Centeredness The respect of culture and traditions, especially the integration of spirituality and the wisdom of Elders, is the basis for the approach and implementation of the training model, including its materials, products and activities.

2. Interdependence is modeled and promoted through cross-cultural collaboration utilizing the participatory process. The tribal community, tribal youth, ICWA designated agents and tribal leaders are considered experts and should be invited to
participate in trainings.

3. **Innovation** The foundation of our work is a growth mindset, which is the belief that growth occurs through hard work, dedication, seeking new strategies and collaboration.

4. **Strength-based Approach** utilizes experiences and strengths of trainers and participants to achieve outcomes.

5. **Reciprocity** is the generous exchange of time, resources and respect to support the development of relationships that ensure positive outcomes.

6. **Professionalism** is exhibited in respectful communications and demeanor in maintaining dignity and decorum throughout the training.

7. **Trust and Long-Term Relationships** Every interaction during the training is an opportunity to restore poor historical relationships between tribal and non-tribal institutions and individuals and to develop trust and long-term relationships.

8. **Creating Positive Outcomes For Tribal Foster Youth** is the intention for each action.

**Ideals**

1. The training will be conducted in partnership with local tribes, tribal families, children & communities, ICWA advocates/social workers and tribal family service programs.

2. The training is revolutionary, unlike anything participants have experienced before, a life-changing experience.

3. Attending this training will be like coming to a special event: participants feel valued for the time they spend there; they feel their achievements are recognized; they have the most recent information, and the highest quality products given to them. They are treated with respect in a comfortable environment and appropriate decorum is established.

4. The training is an immersion process designed so the participant understands and learns tribal culture and values through experience.

5. All discussions, activities, and actions in the training will result in better outcomes for tribal youth and families, as they are the center and purpose of these efforts.
Training Delivery

The 6-hour curriculum is designed to be flexible to better meet the training needs of the participants. Trainers can adjust the training outline and agendas by selecting activities that meet their time and space needs. However, if the training is intended to fulfill the statewide training requirements regarding the California Common Core Curricula for Child Welfare Workers for the topic Indian Child Welfare Act (ICWA), all of the learning objectives in the curriculum must be covered.

The authors strongly recommend that trainers consider allowing as much time as possible for holistic learning among participants, both intellectually and emotionally. Recommendations are made throughout the guide for effectively engage the tribes in the region.

Format

The format of this training resource has the following components:

Learning Objectives
Learning objectives are brief, measurable statements of the knowledge, skills, and values that the participant should obtain from the training. Trainers should read them to be clear about the specific purposes of the training.

Title IV-E Competencies
Title IV-E competencies guide practice and social worker education in California. The competencies listed in this curriculum were selected for their relevance to ICWA-related issues.

Agenda
The agenda is a simple, sequential outline indicating the order of events in the training day, including the coverage of broad topic areas, training activities, lunch, and break times.

Suggested Lesson Plan (Trainer’s Guide only)
The suggested lesson plan in the Trainer’s Guide maps the structure and flow of the training. It presents each topic in the order recommended and indicates the duration of training time for each topic.

The suggested lesson plan is offered as an aid for organizing the training and contains three column headings: Topic, Learning Objectives, and Methodology. The Topic column is divided into training segments. The Learning Objectives column reflects the specific objectives that are covered in each segment, and the Methodology column indicates suggested training activities that accompany each segment.
Training Tips and Activities (Trainer’s Guide Only)
This section is the main component of the Trainer’s Guide. It provides specific instructions and suggestions for each segment of the training and the materials that are needed. Trainers should read these and become familiar with them.

Participant Workbook (separate from the Trainer’s Guide)
The Participant Workbook is intended for participants to use not merely as a resource for the day, but also for future reference and take-home reading. It contains rich historical explanations, photographs, and drawings that provide more detailed background information. Handouts mentioned in the training activities are located in the Participant Workbook.

Trainers should prepare a copy of the Participant Workbook for each person. It is vital that trainers know what participants are using, and strongly advised that trainers distribute the materials to the group for review prior to the training. Materials may be modified for use with a particular group of participants or a particular community. Trainers may want to print the handouts for each segment on different color paper to make them easier to distinguish during the training.

Supplemental Materials
Supplemental materials are those materials intended to complement the training, such as DVD resources, handouts, etc.

Glossary
The glossary defines words and acronyms related to ICWA issues and child welfare practice.
**“Let the Spirit Lead...”**
**ICWA: In the Best Interest of the Indian Child**

“Let the Spirit Lead...” meets and exceeds the statewide training requirements regarding the competencies and standardized learning objectives for the California Common Core Curricula for Child Welfare Workers for the topic entitled *Indian Child Welfare Act (ICWA)*.

### ASFA GOALS

Child safety, well-being, and permanence are addressed in this training, with emphasis placed on the following goals:

**Permanency 1**
Children have permanency and stability in their living situations without increasing re-entry to foster care.

**Permanency 2**
The continuity of family relationships and connections is preserved for children.

**Well-being 1**
Families have enhanced capacity to provide for their children’s needs.

### LEARNING OBJECTIVES

#### Knowledge:

**K1.** The participant will understand the relationship between U.S. history and the Indian Child Welfare Act (ICWA), and will be able to identify three events that led to the passage of ICWA.

**K2.** Participants will understand regional differences of California Indian history and will identify two regional historic events that resulted in historical trauma.

**K3.** Participants will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families and tribes.

**K4.** Participants will recognize that tribes are sovereign nations and that being American Indian/Alaska Native is both a political and cultural distinction.
K5. Participants will be able to identify five basic provisions of the Indian Child Welfare Act.

K6. The participants will be able to identify engagement and teaming with tribes as a part of the new practice model.

K7. Participants will understand the differences between reasonable and active efforts, that active efforts begin immediately when there is reason to know a child is American Indian or Alaska Native, and will be able to change a reasonable effort into an active effort.

K8. Participants will understand ICWA placement preferences and that they are important to one of ICWA’s purposes.

K9. Participants will recognize guardianship and tribal customary adoption as concurrent planning options for American Indian and Alaska Native children.

K10. Participants will be able to describe two positive child welfare outcomes from a tribal perspective and will be able to identify legal consequences to non-compliance with ICWA.

K11. Participants will recognize the legal ramifications related to non-compliance with ICWA.

Skills:
S1. Participants will demonstrate awareness of culturally appropriate engagement for the purpose of identifying American Indian/Alaska Native children.

S2. Participants will demonstrate the ability to change reasonable efforts into active efforts.

Values:
V1. Participants will value engaging and teaming with tribes, tribal service providers and designated ICWA agents and advocates as resources for decision making, ICWA compliance, and implementation of the Practice Model.

V2. Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe to ensure positive child welfare outcomes and ICWA compliance.
TITLE IV-E CURRICULUM COMPETENCIES

The Title IV-E MSW competencies were developed for the M.S.W. specialization in public child welfare in California, a two-year, full-time graduate program.

2.1.2 Apply social work ethical principles to guide professional practice.

Demonstrate capacity to perceive the diverse viewpoints of clients, community members, and others in cases of value conflict and the ability to resolve such conflicts by applying professional practice principles.

Demonstrate knowledge of ethical decision making methods and the capacity to apply these in practice, policy, advocacy and research.

2.1.4 Engage diversity and difference in practice.

Demonstrate knowledge of historical, legal, socioeconomic, and psychological forms of oppression and the ability to develop culturally sensitive interventions within that understanding.

Recognize how institutional racism and power dynamics affect workplace culture and climate in practice.

Demonstrate self-awareness of bias, including knowledge of and capacity to manage power differences, when assessing and working with diverse populations.

Student demonstrates ability to understand and communicate the effects of individual variation in the human developmental process and its importance to the shaping of life experiences within diverse groups.

Student demonstrates capacity to learn from and consult/collaborate with others and to engage constituents/consumers within the helping process.

2.1.5 Advance human rights and social and economic justice.

Demonstrate, through assessment, intervention and evaluation practices, a working understanding of the role and function of historical, social, political, and economic factors as the underlying causes and mechanisms of oppression and discrimination.

Student demonstrates a functional knowledge of advocacy theory, skills, and techniques and consistently engages in activities/tasks designed to promote social and economic justice in working with all client populations.
Student develops case planning strategies to address discrimination, barriers, gaps, and fragmentation that impede client access, functioning, and optimum use of resources and opportunities.

2.1.7 Apply knowledge of human behavior to the social environment.

Demonstrate beginning ability to apply conceptual behavioral frameworks to social environments involved in assessment, intervention and evaluation.

Demonstrate beginning ability to gather and interpret behavioral knowledge in perceiving person and environment.

2.1.9 Respond to contexts that shape practice.

Demonstrate beginning capacity to apprehend changing local and social contexts and scientific advances that affect practice, with an emerging ability to identify and provide relevant services.

Demonstrate a beginning capacity to discern and promote sustainable practice and service delivery change to improve service quality.

2.1.10(a) Engagement

Demonstrate the knowledge base and affective readiness to intervene constructively with individuals and groups.

Demonstrate the capacity to exercise empathy and use of self in engagement and service delivery.

Demonstrate the ability to work with individuals, families and groups to identify and work towards accomplishment of shared goals.

2.1.10(b) Assessment

Demonstrate ability to effectively engage with diverse individuals to gather, analyze, and interpret consumer/client information in a coherent, objective manner.

Demonstrate capacity to conduct a comprehensive, collaborative, unbiased assessment that follows legal and ethical guidelines and identifies strengths and needs.

Demonstrate ability to involve individuals, family members, and community service providers to develop coordinated intervention plans.
Demonstrate ability to critically determine the most appropriate intervention strategies to implement a plan.

2.1.10(c) Intervention

Demonstrate beginning ability to initiate efforts consistent with service and organizational goals.

Demonstrate capacity to identify and utilize prevention measures that enhance individual clients’ strengths and protective factors.

Demonstrate capacity to identify and prioritize challenges and to foster solutions that call on clients’/consumers’ existing strengths.

Demonstrate capacity and skills to undertake the role of client advocate in negotiating for needed policies, resources and services.
“Let the Spirit Lead…”
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AGENDA

1. Registration, Pre-Test
2. Welcome, Introductions, Housekeeping
   • Training Overview, Review of e-Learning, Basic ICWA Provisions
   • Activity: What do we want to gain from today?
   • Compassion ice-breaker

3. Historical Context of ICWA
   • Removal and Relocation
   • Boarding Schools
   • California Indians
   • Indian Adoption Project
   • Two Apologies
   • History, Purpose and Spirit of ICWA

4. Historical Trauma

5. Remedying Bias

6. Tribal Sovereignty

7. ICWA Requirements and Social Work Practice
   • Inquiry and Notice
   • Active Efforts
   • Placement
   • Concurrent Planning
   • Expert Witness
   • Current Events/Outcomes from a tribal perspective

8. Wrap-Up, Post-Test, Evaluation, Closing
**“Let the Spirit Lead...”**

**ICWA: In the Best Interest of the Indian Child**

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**Suggested Lesson Plan**

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<th>Learning Objective</th>
<th>Methodology</th>
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<tr>
<td>N/A</td>
<td>Continental breakfast is made available as a necessary part of the cultural immersion. The pre-test is distributed to participants as they register and are collected when they are finished. <strong>PowerPoint slide 1</strong></td>
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<tr>
<th>Segment 1/Activity 1B: Welcome, Introductions Housekeeping 5 min</th>
<th>Learning Objective</th>
<th>Methodology</th>
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<tr>
<td>Welcome, introductions of trainers and Elders. Invited Elder is asked to offer a Blessing for the day’s activity and all those in attendance.</td>
<td><strong>K6.</strong> The participant will identify engagement and teaming with tribes as part of the new practice model <strong>V1.</strong> The participant will value engaging and teaming with tribes, Indian service, agencies, designated agents as resources for decision making, ICWA compliance and implementation of the practice mode.</td>
<td><strong>Demonstration</strong> Trainers demonstrate and model leadership roles and culturally appropriate introductions. Trainers demonstrate the culturally-based value of respect for Elders in the tribal community with an invitation to offer the Blessing to the group prior to any activity for the day, including the sharing of meals, beginnings and endings. Elders or the trainers can also invite other participants to offer Blessings. <strong>PowerPoint slides 1 - 2</strong></td>
</tr>
<tr>
<td>Segment 1/Activity 1C:</td>
<td>K5. Participants will be able to identify five basic provisions of the ICWA.</td>
<td>Lecture Group Discussion PowerPoint slides 3-20</td>
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<tr>
<td>Segment 1/Activity 1D:</td>
<td>Learning objectives K1-10; S1-2; V1-2</td>
<td>Large group exercise PowerPoint slides 21</td>
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<tr>
<td>Training Overview. E-</td>
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<tr>
<td>Learning Review, Basic</td>
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<td>ICWA Provisions</td>
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<td>Activity will familiarize</td>
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<td>participants with provisions</td>
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<td>of the ICWA, including when</td>
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<td>it applies, to what cases it</td>
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<td>applies, and who is an Indian</td>
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<td>child.</td>
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<tr>
<td>Segment 1/Activity 1D:</td>
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<tr>
<td>What Do We Want to Gain From Today?</td>
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<td>5 min</td>
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<td>Promotes early engagement in learning and gauges participants’ level of knowledge and Transfer of Learning</td>
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<td>Helps participants identify knowledge deficits with regard to the law</td>
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<td>Large group exercise</td>
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<tr>
<td>Trainer scribes on large white sheets that will remain posted on the wall.</td>
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<tr>
<td>This list will be posted and revisited at the end of training so that participants leave with their questions answered</td>
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<tr>
<td>Segment 1/Activity 1E: Compassion Icebreaker 15 min.</td>
<td>V2. Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe and to ensure positive child welfare outcomes and ICWA compliance.</td>
<td>Lecture Group Discussion PowerPoint slides N/A</td>
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<tr>
<td>The activity is intended to involve empathy and facilitate connection between participants. It is also intended to help participants understand the importance of connections and belonging.</td>
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<table>
<thead>
<tr>
<th>Segment 2/Activity 2A: Removal and Relocation 10 min</th>
<th>K1. The participant understand the relationship between U.S. history and ICWA, and will be able to identify three events that led to its passage.</th>
<th>Lecture Group Discussion PowerPoint Slide 22-26</th>
</tr>
</thead>
<tbody>
<tr>
<td>This segment will familiarize participants with the U.S. policy and some of the strategies to assimilate American Indians into mainstream U.S. culture.</td>
<td>K3. Participants will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families and tribes.</td>
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<tr>
<td>K4. Participants will recognize that tribes are sovereign nations and that being American Indian/Alaska Native is both a political and cultural distinction.</td>
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<table>
<thead>
<tr>
<th>Segment 2/Activity 2B: The Boarding School Experience 5 min</th>
<th>K1. The participant understand the relationship between U.S. history and ICWA, and will be able to</th>
<th>Lecture Group Discussion PowerPoint Slides 27</th>
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<tr>
<td>Segment</td>
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<tr>
<td><strong>Review the e-Learning module on boarding schools. Participants will understand trauma and unresolved grief and loss of American Indian individuals and families.</strong></td>
<td>Identify three events that led to its passage. K3. Participants will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families and tribes. V2. Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe and to ensure positive child welfare outcomes and ICWA compliance.</td>
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<tr>
<td><strong>Segment 2/Activity 2C: California Indians, the Mission system and the Gold Rush</strong> 25 min</td>
<td>K2. Participants will understand regional differences of California Indian history and will identify two regional historic events that resulted in historical trauma. K3. Participants will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families and tribes.</td>
<td>Video Discussion PowerPoint Slide 28</td>
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<td></td>
<td><strong>Segment 2/Activity 2D: The Indian Adoption Project</strong> 5 min</td>
<td>K1. The participant understand the relationship between U.S. history and ICWA, and will be able to identify three events that led</td>
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<td>Lecture Discussion PowerPoint Slides 29-30</td>
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<tr>
<td>Segment</td>
<td>Learning Objective</td>
<td>Methodology</td>
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<tr>
<td>Participants will learn the most recent catalyst in the creation of ICWA and understand a source of the unresolved grief or loss experienced by tribal individuals and families.</td>
<td>to its passage.</td>
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<td></td>
<td><strong>K3.</strong> Participants will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families and tribes.</td>
<td>Lecture Discussion PowerPoint Slide 31-32</td>
</tr>
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<td></td>
<td><strong>V2.</strong> Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe and to ensure positive child welfare outcomes and ICWA compliance.</td>
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**Segment 2/Activity 2E:**

**Two Apologies: BIA and CWLA**

5 min

Participants will understand the role of the government and adoption agencies in the removal of Indian children from their homes.

<p>| <strong>K1.</strong> The participant understand the relationship between U.S. history and ICWA, and will be able to identify three events that led to its passage. | Lecture Discussion PowerPoint Slide 31-32 |
| <strong>K3.</strong> Participants will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families and tribes. | |
| <strong>V2.</strong> Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe and to ensure positive child welfare outcomes and ICWA compliance. | |</p>
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<tr>
<th>Segment</th>
<th>Learning Objective</th>
<th>Methodology</th>
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<tbody>
<tr>
<td><strong>Segment 2/2F:</strong> The History, Purpose and Spirit of ICWA 5 min</td>
<td><strong>K1.</strong> The participant understand the relationship between U.S. history and ICWA, and will be able to identify three events that led to its passage. <strong>K2.</strong> Participants will understand regional differences of California Indian history and will identify two regional historic events that resulted in historical trauma. <strong>K3.</strong> Participants will recognize tribes as sovereign nations and that being American Indian/Alaska Native is both a political and cultural distinction. <strong>V1.</strong> The participant will value engaging and teaming with tribes, Indian service, agencies, designated agents as resources for decision making, ICWA compliance and implementation of the practice mode.</td>
<td>Lecture Group Discussion PowerPoint Slides 33-41</td>
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10-Minute Break
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<th>Segment</th>
<th>Learning Objective</th>
<th>Methodology</th>
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</table>
| **Segment 3/Activity 3A:** Effects of genocide and forced assimilation 20 min | **K3.** Participants will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families and tribes.  
**K6.** Participants will be able to identify engagement and teaming with tribes as a part of the new practice model.  
**V1.** Participants will value engaging and teaming with tribes, tribal services providers and designated ICWA agents and advocates as resources for decision making, ICWA compliance and implementation of the Practice Model  
**V2.** Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe and to ensure positive child welfare outcomes and ICWA compliance. | Lecture  
Discussion  
PowerPoint 41-44 |
| **Segment 4/Activity 4A:** Remedying Bias through Recognized Contributions 15 min | | Lecture  
PowerPoint Slide 45 |

The purpose of this segment is to transition the mindset of participants from the
<table>
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<tr>
<th>Segment</th>
<th>Learning Objective</th>
<th>Methodology</th>
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<tbody>
<tr>
<td>historical context of ICWA to the law, and to change perceptions of American Indian/Alaska Indian peoples.</td>
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<tr>
<td><strong>Segment 5/Activity 5A: Tribal Sovereignty</strong>&lt;br&gt;<strong>10 min</strong></td>
<td><strong>K1.</strong> The participant understand the relationship between U.S. history and ICWA, and will be able to identify three events that led to its passage.</td>
<td>Lecture&lt;br&gt;PowerPoint Slide 46-49</td>
</tr>
<tr>
<td>Participants will understand the status of tribes as sovereign nations, their relationship with the United States, and why Congress was compelled to adopt ICWA. This segment will also provide participants with the foundation for understanding specific provisions of ICWA such as noticing, jurisdiction and placement.</td>
<td><strong>K4.</strong> Participants will recognize that tribes are sovereign nations and that being American Indian/Alaska Native is both a political and cultural distinction.</td>
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<td><strong>K6.</strong> The participants will be able to identify engagement and teaming with tribes as part of the new practice model.</td>
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<td><strong>S1.</strong> Participants will demonstrate awareness of culturally appropriate engagement for the purpose of identifying American Indian/Alaska Native children.</td>
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<td><strong>V1.</strong> Participants will value engaging and teaming with tribes, tribal services providers and designated ICWA agents and advocates.</td>
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<td><strong>V2.</strong> Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe and to ensure positive child welfare outcomes and ICWA compliance.</td>
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<td><strong>V2.</strong> Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe and to ensure positive child welfare outcomes and ICWA compliance.</td>
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<td><strong>60-minute Lunch Break</strong></td>
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<td><strong>Section 6/Activity 6A: Inquiry and Noticing</strong></td>
<td><strong>K4.</strong> Participants will recognize that tribes are sovereign nations and that being American Indian/Alaska Native is both a political and cultural distinction.</td>
<td>Video Lecture Discussion PowerPoint Slide 50-81</td>
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<td>20 min</td>
<td><strong>K5.</strong> Participants will be able to identify five basic provisions of the Indian Child Welfare Act.</td>
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<td><strong>Segment 6/Activity 6C:</strong></td>
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"Let the Spirit Lead...” ICWA: In the Best Interest of the Indian Child | Trainer’s Guide
October 2015
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<th>Segment</th>
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<td>cultural distinction.</td>
<td>PowerPoint Slides 89-100</td>
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<tr>
<td><strong>K5.</strong></td>
<td>Participants will be able to identify five basic provisions of the Indian Child Welfare Act.</td>
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<td><strong>K6.</strong></td>
<td>The participants will be able to identify engagement and teaming with tribes as part of the new practice model.</td>
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<td><strong>K8.</strong></td>
<td>Participants will understand ICWA placement preferences and that they are important to one of ICWA’s purposes.</td>
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<td><strong>V1.</strong></td>
<td>Participants will value engaging and teaming with tribes, tribal services providers and designated ICWA agents and advocates as resources for decision making, ICWA compliance and implementation of the Practice Model.</td>
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<td><strong>V2.</strong></td>
<td>Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe and to ensure positive child welfare outcomes and ICWA compliance.</td>
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**Segment 6/Activity 6D: Concurrent Planning and Tribal Customary**

**K4.** Participants will recognize that tribes are sovereign nations and that being

**Lecture Discussion PowerPoint Slide 101-**
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<td><strong>Adoption</strong>&lt;br&gt;10 min</td>
<td>Participants will understand ICWA’s concurrent planning requirements and tribal customary adoption.</td>
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**American Indian/Alaska Native is both a political and cultural distinction.**

**K5.** Participants will be able to identify five basic provisions of the Indian Child Welfare Act.

**K6.** The participants will be able to identify engagement and teaming with tribes as part of the new practice model.

**K9.** Participants will recognize guardianship and tribal customary adoption as concurrent planning options for American Indian/Alaska Native children.

**V1.** Participants will value engaging and teaming with tribes, tribal services providers and designated ICWA agents and advocates as resources for decision making, ICWA compliance and implementation of the Practice Model.

**V2.** Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe and to ensure positive child welfare outcomes and ICWA compliance.
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| Segment 6/Activity 6E: Qualified Expert Witness 10 min | **K5.** Participants will be able to identify five basic provisions of the Indian Child Welfare Act.  
**K6.** The participants will be able to identify engagement and teaming with tribes as part of the new practice model.  
**V1.** Participants will value engaging and teaming with tribes, tribal services providers and designated ICWA agents and advocates as resources for decision making, ICWA compliance and implementation of the Practice Model.  
**V2.** Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe and to ensure positive child welfare outcomes and ICWA compliance. | Lecture  
Discussion  
PowerPoint Slide 109-121 |
| Segment 6/Activity 6F: Current Events affecting ICWA/Outcomes from a tribal perspective 45 min | **K10.** Participants will be able to describe two positive child welfare outcomes from a tribal perspective and will be able to identify legal consequences to noncompliance with ICWA. | Lecture  
Discussion  
PowerPoint Slide 122-125 |
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<th>Segment</th>
<th>Learning Objective</th>
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<td>and changes to federal or state law that affect ICWA. The discussion will bring the training full circle and show positive outcomes resulting from ICWA compliance.</td>
<td><strong>K11.</strong> Participants will recognize the legal ramifications related to non-compliance with ICWA. <strong>V1.</strong> Participants will value engaging and teaming with tribes, tribal services providers and designated ICWA agents and advocates as resources for decision making, ICWA compliance and implementation of the Practice Model. <strong>V2.</strong> Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe and to ensure positive child welfare outcomes and ICWA compliance.</td>
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<td><strong>Segment 7/Activity 7A:</strong> What stands out from today? 15 min</td>
<td>Learning objectives K1-10; S1-2; V1-2</td>
<td><strong>Discussion PowerPoint Slides 126-132</strong></td>
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<td>Review of the items people wished to have addressed at the beginning of training to ensure the participants’ questions were answered.</td>
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<td><strong>Segment 8/Activity 8A:</strong> Wrap-up, Post Test, Evaluations, Closing 15 min</td>
<td>Post-Test Evaluation forms PowerPoint Slide 133-134</td>
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<td>Segment</td>
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<td>Complete post-test, complete course evaluation and bring the training to a close in a culturally-appropriate way.</td>
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Introduction/Pre-Training Tips

Segment 1
1A: Pre-Test, Welcome, Introductions, Housekeeping
1B: Welcome, Introductions, Housekeeping
1D: What do we want to gain from today
1E: Compassion Icebreaker

Segment 2: Historical Context of ICWA
2A: Relocation and Removal
2B: The Boarding School Experience
2C: California Indians
2D: Indian Adoption Project
2E: Two Apologies
2F: The History, Purpose and Spirit of ICWA

Segment 3: Historic Trauma

Segment 4: Remediing Bias: Contributions

Segment 5: Tribal Sovereignty

Segment 6: ICWA Requirements and Social Work Practice
6A: Inquiry and Notice
6B: Active Efforts
6C: Placement
6D: Concurrent Planning ........................................................................................................ 91
6E: Expert Witness .................................................................................................................. 94
Segment 7: Current Events and Outcomes from a Tribal Perspective ........................................... 98
7B: What stands out from today? .................................................................................................. 101
Segment 8: Wrap-Up, Evaluation, Talking Circle, Post Test ......................................................... 103
Pre-Training Preparation | Introductory Training Note

This curriculum is adapted from the Tribal STAR eight-hour full-day training. Trainers are encouraged to attend Tribal STAR Training for Trainers to observe and learn the model as it is intended to be presented. The learning objectives have been enhanced by the State ICWA workgroup and tribal community advisors.

This curriculum is intended to provide participants with an understanding of ICWA that incorporates the spirit of the law and the historic context for its necessity. Trainers should strive to change common perceptions about American Indians/Alaska Natives and assist participants in achieving the cultural competency required to engage with tribal children, families, caregivers and tribes.

- **The authors** highly recommend:
  1. this class be co-trained to model collaboration and to provide the opportunity for the “voices” of each trainer to be heard. It is preferred that one trainer is Native American, one trainer non-Native, and the third be a tribal elder.
  2. one of the trainers has court experience as a lawyer, judge, or ICWA specialist. It is also important to engage and introduce local tribal representatives ahead of time if a tribal panel will be part of the training. See: *Tips for Involving Local Tribal Experts* below.

- **Terminology**
  Various terms for tribal people are used throughout the curriculum, i.e., Native Americans, American Indians, or tribal people. It is important for the social worker to ask what term a family member or youth prefers.

- **Training Preparation**
  The authors recommend that trainers meet with child welfare workers and members of the local tribal community to understand what issues and challenges are impacting ICWA compliance. This information can be incorporated into the training and may serve as a great resource for learning and for collaboration out of the classroom.

- **Tips for Involving Local Tribal Experts**
  Some of the training participants may be tribal members who may be comfortable sharing their experiences and observations. Please refer to the “Tribal Engagement Checklist” in the Supplemental Materials section for guidance regarding culturally appropriate collaboration. The following are suggested steps for inviting and including tribal participation on the panel and in the training:

  1. Using your contacts and reference persons, identify in advance ICWA agents, tribal leaders, tribal youth, and tribal families. Ask them if you can take them to
lunch or meet with them after work to get their advice. It is highly
recommended to arrange an in-person meeting in a setting that is not an ‘office’
and to utilize the culturally appropriate methods of self-introduction as
described in this training curriculum. It is best to mention names of people they
would recognize and respect.

2. When you are meeting with tribal representatives, tell them that you know they
have worked for the community a long time and would like to ask for their help
and advice to help non-tribal social workers better understand what it’s like to
work with American Indian people and communities.

3. Tell tribal representatives about the panel presentation featured in the training
and ask if they would be comfortable sharing their experience and thoughts and
answer a few questions. Let them know it will not take longer than 20 minutes.

4. Always pick up the check and thank them.

5. Always follow up with questions and send materials in advance to tribal guests.
It’s important to be able to pronounce names, titles, and tribal affiliations
correctly for the proper introductions.

6. If honorariums are not available, try to provide gas mileage or other travel
support and small appropriate gifts. Be sure to provide the Participant
Workbook for each guest along with name tags and table assignments.

■ Managing The Conversation
This training is intended to be a conversation that results in changed perceptions of
Native Americans and the importance of ICWA compliance. This conversation has the
potential to awaken historical trauma in some participants and to stir a number of
strong emotions in others. It is difficult to predict how participants will respond, or to
advise in advance how to manage these responses. Tribal STAR-certified trainers and
tribal trainers are encouraged to utilize culturally-appropriate methods of addressing
whatever may occur. Below are possible situations that trainers may encounter and
suggestions about how to address them.

1. Non-native participants may express their perceptions that the information
presented paints them in an unfair light, blames them for the historical trauma
or may express that the trainer/curriculum is racist.

First and foremost, the trainer should refrain from responding emotionally or
from taking the comments personally. The trainer is encouraged to inform all
participants that the purpose of the training is not to place blame on anyone for
the historical events that have occurred. Instead, the purpose is to 1) provide
accurate historical information about events affecting Native peoples today; 2) acknowledge the role of these events as the basis for unresolved grief and loss experienced by Native communities; 3) provide the foundational context for the passage of ICWA, and 4) to help participants better understand the children and families they serve. Trainers should tell participants that we cannot know where we are going (ICWA compliance) unless we know where we came from, and that we are all in this together.

If a participant is adamant that he or she is not interested in the training, cannot participate fully because of their personal feelings and/or is not interested in serving Native children or families, it may be appropriate for the trainer to tell the participant that they may leave the training, and that they are encouraged to pass their case along to a colleague is better able to manage the ICWA case. Trainers should also inform the participant that they will not get credit for the training, and their supervisor will be informed that they did not attend.

2. During a Tribal STAR training, African-American participants noted that despite their collective history, Native Americans in general have maintained a sense of connection to their culture and to the land, while the African-American participants have not. The participants expressed a sadness and grief about the inability to know with such clarity and depth their cultural history and noted that many had even claimed Native American heritage, but were unsure of the basis for these claims.

In a situation like this, it is important to acknowledge and validate what is being expressed. While this training focuses on the historic context and legal requirements of ICWA, the training is not intended to elevate the historical trauma and loss of Native peoples above that experienced by other cultures. Trainers are encouraged to remember that the training should foster a spirit of inclusiveness, without losing sight of the purpose of the training.

3. Native American participants may express unresolved grief and loss/historical trauma during the course of the training, but particularly during discussions about the boarding schools, the adoption project, or California Indian history. Participants may be very emotional in telling their story or in contributing to the discussion.

In all instances, tribal and Tribal STAR-trained trainers are encouraged to use their discretion to utilize culturally appropriate means to acknowledge and address these occurrences. For others, the trainers are encouraged to pause, and acknowledge the contribution of the participant to the discussion and to thank them for their courage and honesty. Depending on the discussion, it may be appropriate for the group to take a short break, or for the trainer to have the
group take a couple of deep breathes, or stand up and stretch to allow participants to regroup.

- **Room Set-Up**
  It is recommended that each training should have at least 32 people and not more than 48. Each table should have at least 4-8 persons with ample room to move. The classroom should be large enough for all participants to stand in one large circle facing center and each other for the Opening and the Closing. Each participant should be able to view a video screen in the front of the room and be able to read brainstormed material written on blackboards or on large sheets.

- **Materials and Preparation**
  1. Display PowerPoint slide #1. Add the date, trainers’ names, and sponsor of the class on the title slide.
  2. Prepare tables with Participant Workbooks and other tools (pens, paper, etc.).

- **Background Reading**
  *See References.*

- **Supplemental Resources**
  Supplemental resources are available on the Tribal STAR website: [http://theacademy.sdsu.edu/Tribal STAR](http://theacademy.sdsu.edu/Tribal STAR):
  - “Tips for Following Protocol”
  - “Recommendations for Developing and Maintaining Tribal Relationships”
  - “Promising Practices for Engaging Tribes on Behalf of Tribal Youth”
  - “Culturally Responsive Communities, Tribes and Native Organizations Increase Cross-Cultural Understanding”
Segment 1: Pre-Test, Welcome, Introductions, Overview, Basic ICWA Provisions

Total Segment Time: 60 min

ACTIVITY 1A: Registration, Pre-Test

Activity Time: 30 min

Materials and pre-training preparation:
- Appropriate Native American posters and quotes or proverbs posted on the training room walls
- Posters depicting children and families, both historical and contemporary, are appropriate.
- Native American artifacts and colorful tablecloths can also be utilized for the registration and food tables to welcome participants.
- Registration materials, including Participant Workbooks, and name should be prepared in advance.
- Arrange a separate table for food and paper goods.

Trainer’s Understanding Block:
- Pre-planning for training is important for successful training.
- In advance of the training, local and regional tribes and respected elders should be invited to participate. (See Tips for Involving Local Tribal Experts above.)
- The use of cultural immersion as a teaching and learning tool is important.
- Cultural immersion incorporates sharing food (continental breakfast, encouraging participants to have lunch together in the training room, traditional introductions, blessings, and closing talking circle.
- Trainers serve as the hosts of this event and should utilize registration time to visit each table to introduce themselves and to welcome each participant with the goal of maintaining this engagement throughout the training.

Training Activity: Registration, Pre-Test and Breakfast

Trainer’s Script:
Participants are welcomed and assisted with registration. Participants are invited to enjoy breakfast and are given the pre-test. After the pre-test is completed, they should be collected by the lead trainer.
End of Activity

PowerPoint Slides:
Segment 1: Welcome, Introductions, Overview, Icebreaker

ACTIVITY 1B Welcome, Introductions, Housekeeping

Activity Time: 5 min

Materials and pre-training preparation:
• Power Point Slide(s):
• Participant Workbook Pages:

Learning Objectives:
• **K6.** The participants will be able to identify engagement and teaming with tribes as a part of the new practice model.
• **V1:** The participant will value engaging and teaming with tribes, Indian Service agencies, and designated agent as resources for decision making, ICWA compliance and implementation of the practice model.

Trainer’s Understanding Block:
• To engage participants individually and as a group with a goal to maintain engagement throughout the training.
• Emphasize the intellectual and emotional nature of the training intended to assist participants in being effecting in their child welfare practice with Native American communities.
• Knowledge and skills acquisition are based on critical values that respect culture, history, and values of Native American communities

Training Activity:
Lecture, trainer interaction

Trainer Script:
All of the co-trainers and invited community guests should stand together and introduce themselves. Native American participants are encouraged to introducethemselves in accordance with their own cultural protocols and in their own language if they speak it.

Housekeeping announcements are made about the agenda, including start, stop, and break times, the locations of facilities, and the quieting of telecommunication devices.

Blessings are offered at the start of any event, before each meal, and at the end of the event. If an appropriate Elder is not present, one of the trainers, particularly the Native American trainer, can offer the Blessing, or the trainer can invite a participant to lead the Blessing and any other Blessing of the day. The trainer may opt to offer a moment of silence instead of a blessing.
Trainer’s Script:
The lead trainer should ask the other trainers to join him or her in the front of the room. The lead trainer then introduces the Indian elder and asks the elder to provide the blessing. If an elder is not present, the trainer may ask the representative of the local tribe to do the prayer, or may offer the prayer himself or herself. The trainer asks how the participants are doing, and how they are feeling about the day.

End of Activity

PowerPoint Slides:
Segment 1: Welcome, Introductions, Overview, Icebreaker


Activity Time: 5 min

Materials and pre-training preparation:
- Power Point Slide(s):
- Participant Workbook Pages:

Learning Objectives:
- **K5.** Participants will be able to identify five basic provisions of the Indian Child Welfare Act.

Trainer’s Understanding Block:
- Review learning objectives and concepts to provide a roadmap for the day
- To engage participants individually and as a group with a goal to maintain engagement throughout the training.
- Emphasize the intellectual and emotional nature of the training intended to assist participants in being effecting in their child welfare practice with Native American communities.
- Knowledge and skills acquisition are based on critical values that respect culture, history, and values of Native American communities.
- The purpose of this activity is to familiarize participants with key definitions of the act to facilitate deeper understanding for later discussions.
- The provisions of ICWA that require the greatest attention from the social worker’s in order to insure ICWA compliance is covered more in-depth later in the training.
- The trainer is encouraged to summarize and convey the concepts of each provisions.

Training Activity: Lecture

Trainer Script:
Your training today is intended to not only help the participants gain intellectual knowledge of the law, but to acquire cultural competency to assist you in your child welfare practice. The training incorporates values that respect culture, history and the cultural values of Native American communities.

What will we learn? We will be discussing a number of things that are important to your understanding of ICWA and your ability to ensure ICWA compliance including: the relationship between United States history and ICWA’s passage; the status of tribes as
sovereign, political entities and their relationship with the United States, the role of historic trauma in Native families’ ability to engage with government agencies, ICWA requirements and best practices, engaging with tribes, tribal advocates and tribal communities as resources for ICWA compliance. Any questions?

As a prerequisite for this training, you were asked to complete eLearning: Indian Child Welfare Act: Bias, Media, and Historical Context. The eLearning component is critical to helping you understand perceptions of Native Americans, and how representations of Native Americans that we all have be exposed to promote bias against Native American peoples even today.

The learning objectives for the eLearning included: understanding how media has shaped and limited our awareness and understanding of American Indian/Alaska Native peoples; recognizing that ICWA is a remedial act intended to address the historic trauma experienced by Native American people, the associated distrust and implications for helping relationships, particularly engaging with Native American families and recognizing that ICWA’s purpose is to restore and maintain connections between Indian children and families and their culture.

Negative bias and misperceptions about American Indians has been the basis and justification for their treatment since just after the creation of the United States. Bias and misperception is the basis for United States federal Indian policy. In the early/mid 1800’s, there were three cases before the Supreme Court, known in the legal profession as the Marshall Trilogy, that are the cornerstone of Indian law and policy. In the first case, Chief Justice John Marshall wrote:

"On the discovery of this immense continent, the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition and enterprise of all; and the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendancy. The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity, in exchange for unlimited independence."

In layman’s terms, Justice Marshall was saying that the European settlers, who wanted to acquire as much land and resources as possible, viewed the indigenous peoples of the land to be inferior, and that because of this perceived inferiority, it was more than generous of the Europeans to “civilize” and to convert them in exchange for their lands. Their bias and prejudice was explicitly the basis for Justice Marshall’s conclusion in the case that the Indians—even though they had been living on their lands when the settlers arrived—only had the right to occupy the land, but did not own it. These biases
and misperceptions were incorporated into law, which provided approval and justification for federal Indian policies such as removal and assimilation.

**Basic ICWA Provisions**
We will be covering some parts of ICWA in greater detail later in the training, but at this time, we will briefly discuss foundational information—the purpose, a few definitions, and preliminary provisions—of ICWA.

What is the purpose of ICWA? In adopting ICWA, Congress declared that the policy of the United States is to protect the best interests of Indian children and **promote the stability and security** of Indian tribes and families. This purpose is accomplished through the establishment of minimum federal standards for the removal of Indian children from their families and their placement in foster or adoptive homes that **reflect the unique values of Indian culture**. The purpose is also accomplished by providing assistance to Indian tribes in the operation of child and family service programs. In other words *if* an Indian child must be placed in out-of-home care, there is a process that every Agency must follow, including ensuring connections between the child and his or her tribal community.

**Who is an Indian child?** An Indian child is any unmarried person who is less than 18 years of age and is also:
- A member of an Indian tribe, or
- Is eligible for membership in an Indian tribe and
- Is the biological child of a member of an Indian tribe.

It is important to note that the child is not required to be a member of a tribe to be considered an Indian child. The child only needs to be eligible for membership in accordance with the tribe’s law, custom or tradition relating to membership.

What is an Indian tribe? An Indian tribe is any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of Interior because of their status as Indians. Approximately every other year, a list of federally-recognized tribes is published in the federal register. There are over 600 federally-recognized tribes in the United States. In California, there are approximately 100 Indian tribes. Because of the number of tribes that exist, it may sometimes be challenging to know how to contact a tribe. For this reason, you should utilize a number of resources including: Federal Register listing of tribes, the Federal Register listing of ICWA Agents and the California Department of Social Services has a list of tribes that includes both their more commonly known names and their name as it appears in the federal register for ICWA agents and/or on the federal register listing of tribes. While the CDSS list can be quite helpful, it is not always up-to-date. The Bureau of Indian Affairs can also assist in identifying tribes. You should also be advised that the “official” name of the tribe may not be apparent. For example:
• Maybe a mother indicates she is a member of the Gros Ventre (grow-vaunt) tribe in Montana. This tribe appears in the federal register as The Fort Belknap Indian Community of the Fort Belknap Reservation of Montana.
• Cherokee Nation is one of three recognized Cherokee tribes.

Who determines who is an Indian child? Only an Indian tribe determines whether a child is a member or eligible for membership. A child does not have to be enrolled in the tribe in order to be considered an Indian child unless the tribe confirms in writing that enrollment is a prerequisite to membership in accordance with the tribe’s laws, customs and traditions.

If enrollment is a prerequisite, the tribe determines the enrollment criteria, which may be proof of lineal descent or blood quantum. Each tribe determines its own blood quantum criteria if it is required. Some tribes require a child to be 1/8, 1/4, 1/2, 5/8, etc. in order to be enrolled. In order to know about a particular child, it is imperative that the tribe be notified so that the tribe can make a determination.

To What Cases does ICWA apply? ICWA applies to the following types of proceedings:
  a. In child custody proceedings
     ▪ Foster care placement
     ▪ Termination of parental rights
     ▪ Pre-adoptive placement
     ▪ Adoptive placement
     ▪ Divorce proceedings or custody disputes in which neither parent will have custody of the child.

To what cases does ICWA not apply? ICWA does not apply to
  a. Delinquency proceedings. However, if the child is being temporarily or permanently removed from the family home because of protective issues in the home, rather than the conduct of the child, ICWA does apply.
  b. Divorce proceedings, if custody is granted to one of the parents.

When does ICWA apply? The case should be treated as an ICWA case immediately if there is reason to know that a child is or may be Indian. At the same time efforts need to be made to notify the tribe and confirm whether the child is an Indian child under ICWA. “Reason to know” that a child is an Indian child includes, but is not limited to, information from parents, family, caregivers, etc., who say the family is Native American; the family receives services from tribal services providers (such as Indian Health); the family resides on an Indian reservation or in a known Indian community or rancheria. Best practice is to assume the child is an Indian child until information indicates otherwise.
When does ICWA not apply? ICWA does not apply when the court determines ICWA is inapplicable after there has been 1) a full and complete inquiry, 2) proper and adequate notice, and 3) neither the tribe nor the BIA have confirmed the child is an Indian child within 60 days. If the tribe or BIA subsequently confirms the child is an Indian child, the court must reverse its finding.

Tribal Participation. Tribal participation in child dependency proceedings may occur in several ways. A tribe may decide to intervene in the proceeding. If a tribe has a tribal court, it may petition to take jurisdiction. If the tribe has exclusive jurisdiction the case must be transferred. In California, only two tribes have exclusive jurisdiction: Washoe Tribe and Yurok Tribes in other states may also have exclusive jurisdiction. Tribes without exclusive jurisdiction still may petition the court to transfer the case or may choose to participate as a party in the state court proceedings. A tribe may also choose not to participate. Whether the tribe petitions to intervene or not, and whether the tribe requests transfer of jurisdiction or not, the case must still be treated as an Indian case and all the provisions of the Act followed.

End of Activity

PowerPoint Slides:
To what cases does ICWA apply?
Divorce proceedings or custody disputes in which neither parent will have custody of the child. (Family law)

When does ICWA apply?
The case is treated as an ICWA case immediately if there is reason to know that the child is or may be Indian. At the same time, the tribe should be provided notice and the opportunity to confirm if the child is an “Indian child.”

Tribal Participation
Whether the tribe petitions to intervene or not and whether the tribe petitions to take jurisdiction or not, the ICWA still applies and its provisions must be followed.

To what Cases does ICWA not apply?
1. Delinquency proceedings unless the child is being temporarily or permanently removed from the family home because of protective issues in the home.
2. Divorce proceedings if custody is granted to one of the parents.

When does ICWA not apply?
When the court determines it does not apply after:
- Full and complete inquiry
- Proper and adequate notice
- Neither a tribe nor the BIA have confirmed the child is an Indian child within 60 days

If the tribe or BIA subsequently confirms that an Indian child is involved, the court must reverse its finding.

Who determines who is an Indian Child?
Only an Indian tribe is able to determine whether a child is a member of a tribe or is eligible for membership in the tribe.

Tribal Participation
- The tribe may assert exclusive jurisdiction, in which case transfer is mandatory.
- If it does not have exclusive jurisdiction, it may still petition for transfer of jurisdiction.
- The tribe may decide to intervene.

Other definitions:
‘Parent’ means:
- A biological parent of an Indian child
- An Indian person who has adopted the child under tribal law or custom or state law
- A biological parent who is married to an Indian person and the marriage has not been acknowledged or established

Other definitions:
‘Indian custodian’ means:
Any Indian person who has legal custody of an Indian child by:
- Tribal law or custom
- State law
- Temporary transfer of physical care, custody and control by parent
Segment 1: Welcome, Introductions, Overview, Icebreaker

ACTIVITY 1D: What Do We Want to Gain from Today?

Activity Time: 5 min

Materials and pre-training preparation:
- Large white sheets on stand or taped to the wall for documenting brainstorming activity
- Large dark colored markers
- PowerPoint Slide

Learning Objectives:
- K1-K10
- S1-S2
- V1-V2

Trainer’s Understanding Block:
- Trainer engages participants by asking questions to gain participant ownership of the day’s training to maximize the learning opportunity.
- For the trainers, it serves to gauge the participants’ level of ICWA knowledge and experience
- This activity, when reviewed at the end of the training to assess whether all questions were answered, assists in the transfer of learning.

Training Activity: Facilitated discussion
Although learning objectives have been developed for this training, it is important to know what participants want to learn and what information will be most useful for them. It is important to be attuned to the needs of the learners. Do not engage in lengthy discussions during this activity. Instead offer brief answers and explain that details will be covered throughout the day.

One of the trainers or a volunteer participant should write down the topic of the question or the full question on the white page. Post these on the wall for review at the end of the training to determine if answers were provided during the course of the training.

Trainer’s Script:
What challenges do you anticipate you will have if you are assigned and ICWA case?
What challenges have you heard your colleagues experience with ICWA cases?
What challenges do you have in your current ICWA cases? Participants will often provide the following answers: The cases are too much work. The tribe is not responsive.
What do you think the primary reason ICWA cases are being appealed? In California, the primary reason is because of improper noticing. The judge in a recent case from Riverside County remanded the case because the agency did not provide notice to a tribe, and stated in the opinion that notice was a relatively simple thing to do. These appeals represent wasted resources for your Agency in terms of the financial cost of the appeals process and the time personnel time devoted to the appeal and in some cases, permanency for the child is delayed. To reduce or avoid appeals related to ICWA, best practices are to make proper inquiry, provide proper notice in accordance with law, engage in active efforts early in the case and thoroughly document everything.

End of Activity

PowerPoint Slide:

What do we want to get out of today?
Segment 1: Welcome, Introductions, Overview, Icebreaker

ACTIVITY 1E: Compassion Icebreaker

Activity Time: 15 min

Materials and pre-training preparation:
- None

Learning Objectives:
- V2. Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe to ensure positive child welfare outcomes and ICWA compliance.

Trainer’s Understanding Block:
- This activity promotes early engagement of participants by evoking empathy and promoting personal connections through similar experiences.
- This activity is intended to set an empathetic foundation to help participants understand the importance of meaningful connections to family and heritage.
- This activity will facilitate connection with participants.

Training Activity: Icebreaker
Trainers should be aware that this activity may stir historical trauma and/or unresolved grief and loss for some participants. As a result, trainers should be prepared to mediate the emotion and help participants to become refocused and grounded.

Trainer’s Script:
The trainer will share a memory of a time that he or she did not fit in with a group and felt uncomfortable. The trainer will ask participants to think of a time that they did not fit in and to share this memory with their neighbor (10 minutes).

Trainer can wrap up the activity by asking what that participants take away from the activity and sharing that this activity was intended to provoke empathy in the participants and help them to understand more personally the experience of Native peoples, and their responses to government agents, child dependency processes and the state of mind of some of the individuals they may be serving. ICWA is about protecting the child’s legal relationship with their tribe, ensuring a connection with the child’s culture and extended family, and ensuring the child knows they belong somewhere. ICWA is about belonging.

End of Activity
Segment 2: Historical Context of ICWA

Total Segment Time: 60 min

Activity 2A: Removal and Relocation

Activity Time: 10 min

Materials and preparation:
- PowerPoint Slide:
- Participant Workbook Page (s):

Learning Objectives:
- **K1.** The participant will understand the relationship between U.S. history and the Indian Child Welfare Act (ICWA), and will be able to identify three events that led to the passage of ICWA.

- **K3.** Participants will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families and tribes.

- **K4.** Participants will recognize that tribes are sovereign nations and that being American Indian/Alaska Native is both a political and cultural distinction.

Trainer’s Understanding Block:
- The purpose of this module is to familiarize participants with some of the U.S. policy and strategies intended to assimilate American Indians into mainstream U.S. culture.
- This segment is intended to inform participants that a primary assimilation strategy was to separate American Indians from their lands and is one source of great loss experienced by American Indian people.

Training Activity: Lecture; Discussion

Trainer’s Script:
“Don’t you know where you are going until you know where you came from.” Why is this here? How is this related to the training? This is here to tell us why we are about to take a journey through some painful history. For Native American people, cultural beliefs and cultural identity revolve around a relationship to place and to their ancestors. For a Native person to understand who they are, their place in their family, and their role in their community, they must first understand to whom they are related and where their ancestors are from. You could think of this as you would think of planning a road trip: you cannot figure out how to get where you are going unless you first know where you are. For you, how can you improve your welfare practice if you

“Let the Spirit Lead...” ICWA: In the Best Interest of the Indian Child | Trainer’s Guide
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don’t understand why the law mandates certain things? The purpose of the historical context is to help you to understand the course of events that ultimately led to the need for ICWA. You don’t know where you are going until you know where you came from.

Early in US history, the American Indians were viewed as an obstacle to white settlement and prosperity and were referred to as the “Indian problem” in need of a solution. Two schools of thought existed with regard to resolving this ‘problem.’ The first was to civilize the Indians by making them Christian farmers who owned and cultivated their individual plots of land. However, many Indians resisted all attempts to force them to abandon their culture and lands, so policy-makers turned to the second strategy of removal.

In 1738, George Washington said that “the gradual extension of our settlements will as certainly cause the Savage as the wolf to retire; both being beasts of prey though they differ in shape.” He believed it unwise to use force to remove Indians from their lands, but to instead allow the white settlements to expand, clearing forest lands and chasing the wild game away, with the Indians following. By 1828, however, demands by white settlers for Indian removal had grown, which resulted in the election of Andrew Jackson as president. Jackson was well-known for his exploits as an “Indian-fighter.” He fought the Creek Indians in 1814, which resulted in the Creeks ceding approximately 20 million acres of their homelands to the United States. He waged war against the Seminoles as punishment for harboring fugitive slaves and had otherwise campaigned for Indian removal. Shortly after Jackson became President, Congress passed the Indian Removal Act (1830). The Act authorized the relocation of all Native Americans living east of the Mississippi to the Indian Territory in Oklahoma. The Act promoted as being for the protection of the Indians against white incursion, but in reality, the Act was the means to open Indian lands for undisturbed white settlement. Though technically relocation under the Act was “voluntary” on the part of the Indians, it was brutally enforced by the US Army. The relocation affected more than 10,000 Indian across what became five states and included the Five Civilized Tribes: Cherokee, Choctaw, Chickasaw, Creek and Seminole. Many suffered extreme hardship during the removal—they suffered from starvation, disease and exposure. Thousands died. The removal of the Five Tribes, and specifically the Cherokee, is known as the Trail of Tears.

The United States’ assimilation policy and removal strategy did not end there. In the 1950’s the United States created the Indian Relocation Program, a plan to remove Indians from their reservations to cities where they would assimilate with mainstream America. The program grew from the 1947 Hopi-Navajo Act, a $90 million rehabilitation

2 Ibid.
project to address the chronic poverty on both reservations. Through this program policy makers learned that it was less expensive to relocate Indians from their reservations than to address the dire conditions. The relocation program slowly grew and in 1952, Commissioner of Indian Affairs, Dillon Myer, unveiled Operation Relocation, which provided relocation and job placement assistance in Chicago, Los Angeles, Salt Lake City and Denver. In 1953, a more concerted effort was made to extract the federal government from Indian Affairs, and thus the relocation program continued to expand. By removing Indians to cities and assimilating them, the federal government would be able to cut its ties with tribal governments and reduce its financial obligations accordingly.

Relocation offices were set up on reservations and in cities. Relocatees received the bare minimum in job placement and housing assistance, which ended as soon as they found jobs or housing. Indians who relocated through this program were often sent to cities furthest from their homes to discourage their return, and were often not provided with the names of other Indians also relocating to discourage cultural associations. The promise of secure employment did not materialize for many. Many did not find jobs, and those jobs that were available were temporary and low-paying. Affordable housing was substandard and often located in low-income neighborhoods or “skid-row”, or was in high-rise, crowded apartment complexes. Many Indians were not prepared for confined, urban living as the “fast-paced, competitive existence in cities represented a dramatic departure from the collective, tribal world to which most were accustomed.”

Many Indians returned to their reservations, but those who did not often found themselves in trouble with the law, usually resulting from drug and alcohol use. The BIA did not keep adequate statistics of the relocation program but claimed that only 30% of the relocated Indians returned to reservations. Critics of the program claim the number was much higher. Formal urban relocation continued into the late 1960’s but included federal appropriations and the program emphasized job assistance. It is estimated that over 10,000 American Indians were relocating to urban areas each year by 1968.

Despite efforts to assimilate American Indians, a new tribal community emerged. American Indians formed support networks with one another. The urban Indians were less connected with their individual tribes and more connected to the diversity of Indian nations represented. A new generation had more than one tribal identity as members of tribes inter-married and a pan-Indian identity developed. Today, 61% of American Indians...

4 Ibid at 90.
5 Ibid at 91.
6 Ibid at 95.
Indians do not live on reservations. New York, Los Angeles, Phoenix, and Chicago have the highest number of American Indians\(^7\).

Additional statistics relating to urban Indians:
- The poverty rate is 20.3% as compared to 12.7% for the general population.
- Unemployment is 1.7 times higher than non-Indians.
- Urban Indians are 3 times more likely to be homeless.
- Homes occupied by urban Indians are significantly more likely to lack basic plumbing, kitchen facilities, and telephone service.
- Native children are involved in 5.7 child abuse and neglect cases per 1000 children each year, compared to 4.2 for the total population. \(^8\)

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\(^8\) Ibid.
Segment 2: Historical Context of ICWA

Activity 2B: The Boarding School Experience

Total Segment Time: 5 min

Materials and preparation:
- Power Point Slide(s):
- eLearning module
- Participant’s Workbook Page(s):

Learning Objectives:
- K1. The participant will understand the relationship between U.S. history and the Indian Child Welfare Act (ICWA), and will be able to identify three events that led to the passage of ICWA.
- K3. Participants will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families and tribes.
- V2. Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe to ensure positive child welfare outcomes and ICWA compliance.

Trainer’s Understanding Block:
- This segment is intended to help participants understand the profound negative impact boarding schools have had on Native Americans.
- The purpose of this segment is to emphasize the role of boarding schools as an assimilation strategy.
- The purpose of this segment is to assist participants in understanding the historical trauma and unresolved grief and loss experienced Indians and tribal communities continue to experience and the importance of ICWA in remedying these affects.

Training Activity: Facilitated discussion
The trainer should keep in mind the unstated connection between the current role of public child welfare and the historical experiences of families that include generational memories of the boarding school era. Child welfare workers can unwittingly contribute to painful reminders and experiences in families.

The trainer will review the boarding school segment of the eLearning module which included the 500 Nations boarding school segment.

Trainer’s Script:
As you recall from the eLearning, one strategy to effect the U.S. assimilation policy was to remove children from the reservation and place them in boarding schools. Boarding
school education were military-like and intended to separate children from their families, their lands, their language, their spirituality and their culture. Boarding schools were located a great distance from the tribal communities they served. Their philosophy was absolute immersion into Anglo-Christian culture including its language, religious, work ethic, standards of appearance and discipline. To accomplish this immersion, the children were forbidden from speaking their language, from engaging in traditional spiritual practices and sometimes even visiting family. Punishment was corporal and cruel, and children were often subject to physical, emotional, and sexual abuse.

The first boarding school was the Carlisle Indian School, founded in 1879. The Carlisle model emphasized religion, academic training and institutional labor and was adopted by a number of other boarding and mission schools in subsequent years. Boarding schools were the primary means of education for Indian children until the 1920’s. The Meriam Report documented the failures and inadequacies of the Boarding schools, which had lasting and profound effects on adults who had been raised in the boarding schools. For example, adults did not gain the traditional parenting skills from their tribal cultural; corporal discipline was introduced in many families where it had not previously existed, as was sexual violence. Children raised in the boarding schools were denied participation and traditional teachings provided through coming-of-age ceremonies and rituals and through participation in tribal spiritual ceremonies. Additionally, the legal prohibition on many tribal spiritual practices denied children and families the ability to mourn seek comfort in traditional ways. Many traditional teachings were lost and the ability of tribal people to raise and maintain successful, healthy families diminished.

What is our take away from the video?
Segment 2: Historical Context of ICWA

Activity 2C: CA Indians: Mission System and Gold Rush

Activity Time: 25 min

Materials and preparation:
- DVD from the 500 Nations DVD set
- PowerPoint Presentation
- Participant’s Workbook Page(s):

Learning Objectives:
- K2. Participants will understand regional differences of California Indian history and will identify two regional historic events that resulted in historical trauma.
- K3. Participants will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families and tribes.

Trainer’s Understanding Block:
- The purpose of this segment is to inform participants of the experience specific to California Indians.
- The segment is important to understanding the historical trauma experienced by California Indians and the legacy of grief and loss to families and tribes.
- This segment will help participants understand the unstated connection between the current role of public child welfare and the historical experiences of families, including the unrecognized status of some tribes, which have marginalized California Indians.

Training Activity: DVD; Facilitated Discussion
After the video trainer should be mindful of and acknowledge any discomfort in the group. The trainer should provide a summary statement that US policies from the inception of the United States (removal, allotments, boarding schools, termination) were all intended to destroy Native cultures. These policies included the unwarranted break up of Indian families through the removal of Indian children. The trainer should explain that ICWA is a remedial statute intended to protect the continuity and security of tribes by keeping children connected with their families and tribal communities.

Trainer’s Script:
Trainer will lead a discussion after the video. What are our thoughts about this segment? What implications does it have for child welfare practice?
It is important to note that the California tribes were significantly impacted by the gold rush. The gold rush in northern California resulted in many historic traumas for the tribes.

It is also important to remember that in southern California tribes were gravely affected by the mission system. Today many tribes in southern California make extra efforts to reclaim their culture and traditions that were suppressed by the mission system.

End of Activity

PowerPoint Slide:
**Segment 2: Historical Context of ICWA**

### Activity 2D: The Indian Adoption Project

**Activity Time: 5 min**

**Materials and pre-training preparation:**
- PowerPoint Presentation
- Participant’s Workbook Page(s):

**Learning Objectives:**
- **K1.** The participant will understand the relationship between U.S. history and the Indian Child Welfare Act (ICWA), and will be able to identify three events that led to the passage of ICWA.
- **K3.** Participants will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families and tribes.
- **V2.** Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe to ensure positive child welfare outcomes and ICWA compliance.

**Trainer’s Understanding Block:**
- This segment is intended to inform participants that U.S. assimilation policies continued into the 1960’s and 1970’s.
- The purpose of this segment is to inform participants of recent events that have separated children from families and tribal communities.
- Participants will learn the most contemporary catalyst in the creation of ICWA.
- The purpose of this segment is to assist participants in understanding the historical trauma and unresolved grief and loss experienced Indians and tribal communities continue to experience and the importance of ICWA in remedying these affects.

**Training Activity:** Brief Lecture

**Trainer’s Script:**
The Indian Adoption Project was a partnership between the Bureau of Indian Affairs (BIA) the Children’s Bureau and the Child Welfare League of America. Funded by the
BIA, the project was a social experiment that allowed Native American children to be removed from their families and placed with non-Indians for adoption. The project operated during the Termination Era, which is the era of US federal Indian policy intended to assimilate Indians. The formal project occurred between 1958 and 1967, during the same time period that the government was terminating its trust relationship with tribes, and relocating reservation Indians to urban centers in furtherance of its assimilationist solution to the continuing “Indian Problem.” The project was continued until 1976 by private adoption agencies, boarding schools and. 395 children were adopted through the Project (in 16 states and through 31 different adoption agencies). It is estimated that between 1961 and 1976 12,486 children were adopted.  

End of Activity

PowerPoint Slide:

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Segment 2: Historical Context of ICWA

Activity 2E: Two Apologies: BIA and CWLA

Activity Time: 5 min

Materials and pre-training preparation:
- PowerPoint Presentation
- Participant’s Workbook Page(s):
- DVD of Kevin Gover’s apology on behalf of the BIA (also available on YouTube)

Learning Objectives:
- K1. The participant will understand the relationship between U.S. history and the Indian Child Welfare Act (ICWA), and will be able to identify three events that led to the passage of ICWA.
- K3. Participants will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families and tribes.
- V2. Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe to ensure positive child welfare outcomes and ICWA compliance.

Trainer’s Understanding Block:
- This segment is important for providing historical context and eliciting emotional reactions from participants.

Training Activity: Lecture; discussion
The trainer is encouraged to explain what the BIA is and its role in federal-tribal relations.

Participants are most often touched emotionally by this brief presentation, heightening their cognitive awareness and understanding of the traumatic historical experiences of American Indians, linking it to the “why” of ICWA. Trainers allow for expressions of sorrow and empathy in the discussions, empowering learners to focus these responses toward improved practice responsibilities.
In the interest of time, the trainer should summarize the two apologies for the participants. Trainer may direct participants to where they can view the BIA apology and should point out that the texts of the two apologies are available in their workbooks.

**Trainer’s Script:**

How is this information useful for you? How does this knowledge impact your thinking about your practice?

Possible answers include:

- Consider including historical trauma when assessing and planning with the family.
- Consider placements that maintain and support cultural connections.
- DVD of Kevin Gover’s apology on behalf of the BIA depicts his 17-minute remarks in a presentation to Tribal leaders and their councils from all over the country at
ACTIVITY 2F: History, Purpose and Spirit of ICWA

Activity Time: X min

Materials and pre-training preparation:
- Power Point Presentation
- Participant Workbook Page(s):

Learning Objectives:
- **K1.** The participant will understand the relationship between U.S. history and the Indian Child Welfare Act (ICWA), and will be able to identify three events that led to the passage of ICWA.
- **K2.** Participants will understand regional differences of California Indian history and will identify two regional historic events that resulted in historical trauma.
- **K3.** Participants will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families and tribes.
- **V1.** Participants will value engaging and teaming with tribes, tribal service providers and designated ICWA agents and advocates as resources for decision making, ICWA compliance, and implementation of the Practice Model.

Trainer’s Understanding Block:
- The Trainer provides a brief timeline of key events and circumstances that resulted in the passage of ICWA
- It is important for participants to understand the historical significance of their actions as child welfare workers and the conduct of other providers.
- This segment sets the groundwork for the course of learning.
- The information in this section explains why non-federally recognized tribes exist in California.
- The section defines the Spirit of ICWA and explains how this serves the best interest of all Indian children.
- The trainer should emphasize that following the spirit of the law is just as important as following the letter of the law.
• Trainer should be familiar with provisions of California law that give a judge the discretion to allow a tribe to participate in hearings when ICWA does not otherwise apply.

Training Activity: Lecture

Trainer’s Script:

In the mid-1970s the United States Congress authorized the creation of the American Indian Policy Review Commission. The purpose of the Commission, as the name suggests, was to review the history and then-current status of the United States’ government’s policy for dealing with Indians and make recommendations for Congressional changes in that policy. The Commission created 11 task forces to address a number of issues; Task Force Four addressed issues of federal, state and tribal jurisdiction. That task force’s final report to the Commission in 1976 (the Report) included a section regarding child custody which outlined the need for what was to become the Indian Child Welfare Act.

The Report cites a frequently asked question: since both Indian and non-Indian systems act in the best interests of the child, what difference does it make as to who makes the decision about Indian children? The difference is that these decisions are inherently biased by the cultural setting of the decision maker…when decisions are made by non-Indian authorities.\textsuperscript{11} The Report indicates that up to that time estimates based upon the best available data indicated that 25-35\% of all Indian children were raised at some time by non-Indians in homes and institutions. The Report also notes a curious paradox: many early non-Indian commentators praised familial and tribal devotion to their children, yet now, after generations of contact and conflict with western “civilization,” so many Indian families are perceived as incapable of childrearing.\textsuperscript{12}

Congress, in passing the Indian Child Welfare Act of 1978, affirmatively stated:

“…it is the policy of this Nation to protect the best interests of Indian children...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…”\textsuperscript{13}

In the hearings which preceded passage of the Act, Congress found that: 1) Indian children are the most vital resource for the continued existence of Indian Tribes and

\textsuperscript{12} Ibid.
\textsuperscript{13} Ibid., p. 7
therefore must be protected; 2) an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of children by public and private agencies and an alarmingly high percentage of such children are then placed in non-Indian homes and institutions; and 3) the States have failed to recognize the tribal, social, and cultural standards prevailing in Indian communities and families. The Act was passed to remedy these problems.

Spirit of ICWA

California Indians found themselves homeless and landless when they realized that the treaties they signed in 1851-1852 with the United States were not ratified. The decision not to ratify the treaties was held under an injunction of secrecy until 1905. In the 1870's the United States began to purchase small tracks of land for multiple tribes creating over 50 Rancherias. The Rancheria Act of 1958 terminated the United States’ relationship with those tribes, which ended federal responsibility to the tribes and recognition of them. Starting in the late 1970's tribes began to fight for restoration of recognition. In 2015, there were 41 Indian Rancherias with federal recognition creating a total of 109 federally recognized tribes in California.

Because many non-recognized tribes are in California, following the Spirit of ICWA is imperative to achieve the purposes of ICWA. Following the Spirit of ICWA ensures access to culturally appropriate services for Indian children and families and facilitates connections between the child, extended family, and the tribe, whether or not they are recognized by state or federal governments.

How is the Spirit of ICWA followed in California? California law (formerly known as SB 678) gives judges the discretion to allow non-recognized tribes to participate in the proceedings although ICWA does not apply. This does not allow the court the discretion to declare ICWA applicable. The Spirit of ICWA also means treating the case as an ICWA case and following the provisions of ICWA where 1) a tribe is non-federally recognized but applying for federal recognition; 2) a tribe is not federally-recognized and not pursuing federal recognition but has a functioning government, maintains its culture, ceremonies, languages and customs and traditions; 3) the family is Native American but not members of a tribe; or 4) if the children descend from a federally recognized tribe but are not eligible for membership.

Research shows that tribal youth who maintain connections to their families and culture achieve better (contributing members of the tribal and non-tribal community, sense of belonging, cultural permanency, for example) and that a culturally-centered child welfare practice results in a reduction in the number of times an individual enters public

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14 Ibid., p. 7.
health systems, thus reducing the public burden of cost if provided at the very beginning.
Segment 3: Historical Trauma

Activity 3A: Effects of genocide and forced assimilation

Activity Time: 20 min

Materials and pre-training preparation:
- PowerPoint Presentation
- Participant’s Workbook Page(s):

Learning Objectives:
- **K3.** Participants will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families and tribes.
- **K6.** The participants will be able to identify engagement and teaming with tribes as a part of the new practice model.
- **V1.** Participants will value engaging and teaming with tribes, tribal service providers and designated ICWA agents and advocates as resources for decision making, ICWA compliance, and implementation of the Practice Model.

Trainer’s Understanding Block:
- The purpose of this segment is to name and validate the emotional and psychological consequences of attempted genocide to Native Americans.
- This segment is intended to assist participants in understanding the reason why Native American children, families, caregivers and communities respond the way they do to government agents, particularly those in child welfare.

Training Activity: Lecture
This discussion may give rise to conflict from participants who perhaps deny historic events, or express that they feel blame is being placed on them. Trainer can mitigate this aspect by informing participants that the trainers are not there to place blame or pass judgment, but rather to inform the participants of the historical context that made ICWA necessary, and to provide information that will allow the participants to be most effective in serving their clients. The trainer should remind participants that we are all in this together, that everyone has an interest in ensuring ICWA compliance. The trainer
should allow time for group processing of historical trauma and what it means for social workers trying to engage with American Indian/Alaska Native families.

**Trainer’s Script:**

In order to understand the effects of genocide and forced assimilation in terms of historical trauma, it is first helpful to define its aspects. *Cultural Trauma* is an attack on the fabric of society, affecting the very essence of the community and its members. Who can give an example of cultural trauma? (Answers may include: Trail of Tears, Wounded Knee, urban relocation, boarding schools, etc.) *Historical trauma* is the cumulative exposure of traumatic events that affect an individual and continues to affect subsequent generations. *Intergenerational trauma* occurs when trauma is unresolved, internalized and subsequently passed from one generation to the next.

The cultural trauma experienced by American Indian/Alaska Native peoples has been extensive: killed, forcibly removed from their lands, forcibly separation from languages and culture, and prohibitions against spiritual practices. These experiences had profound effects: traditional parenting skills were lost or impaired; a sense of identity and belonging was lost, and traditional gender roles and knowledge was compromised. The pain of these losses was compounded by the continued devaluation of American Indian peoples, failure to acknowledge the grief and loss by dominant culture and the inability to grieve the losses in a culturally appropriate way.

Unresolved grief and loss manifests in a number of ways:
- Being quick to anger
- Low self-esteem/shame of identity
- Depression
- Suicidal ideation
- Self-harm behaviors
- Substance abuse/addictive behaviors
- Violence
- Victim identity
- Yearning
- Preoccupation with thoughts of the ancestors lost
- Focus on ancestors’ suffering
- Yearning (traditional lands, cultural practices, languages)

It may also manifest in emotional remoteness (going through the motions), and apathy and resistance toward following through with case plans, contacting services providers,

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or engaging with government agencies. It is through these manifestations that unresolved grief and loss is internalized and then passed to the next generation.

Approximately 35% of children in many Native American communities have been removed either temporarily or permanently from their families and tribes. This figure has been roughly the same for over 100 years and today, although comprising only 1% of the population, Native American children represent over 2% of the population in out-of-home care.

Some may reason that events that occurred several generations ago have little or no bearing on current situations, and that appreciating the present is more important that revisiting the past. In other words, “why can’t Indians just get over it?” Understanding the impact of historical events is part of understanding cultural aspects of Native life and the cultural identity of Native people. There remains a desire to remain who they are as Native peoples and to live according to their traditions and cultural teachings. This does not mean the present is not important. It means the present links the future with the past because Native people do not isolate themselves from their ancestors or the future generations.

Traumatic events of the past that have negatively impacted Native people have made it difficult for individuals to care for themselves, their children and their families. The impact of having a significant portion of the tribe removed reverberates, even today, on tribal relationships. One in three tribal people have experienced or have been affected by boarding schools. Many adults in tribal communities with whom social workers are attempting to collaborate may have their own child welfare history that may not have been addressed. It is understandable that adults who have been in foster care as children may be hesitant to talk to social workers about their children, because of their own experience. Tribal elders also may have a history of being in foster care, or have children with whom they were very close that were removed and returned without a good reunification plan that addressed tribal connections. Active efforts are important in addressing these issues as they build trust and will help empower Native families.

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PowerPoint Slide:

**Historic Trauma: Examples**
- Unresolved grief and loss that result from historic trauma, manifesting itself in:
  - being quick to anger
  - loss of identity
  - loss of culture
  - suicide ideation
  - substance abuse
  - violence

**Historic Trauma**
- Cultural Trauma is an attack on the fabric of a society, affecting the essence of the community and its members.
- Intergenerational Trauma occurs when trauma is not resolved, subsequently internalized, and passed from one generation to the next.

**Historic Trauma: Examples**
- Loss of parent skills and shame about loss of culture (knowing what to do when children make decisions)
- Emotional remoteness and "going through the motions" of the process
- Apathy and resistance toward following through with case plans or contacting other agencies.
Segment 4: Remedying Bias through Recognized Contributions

Activity 4A: Contributions Power Point
Activity Time: 15 min

Materials and pre-training preparation:
- Power Point Presentation
- Participant’s Workbook Page(s):

Learning Objectives:
- N/A

Trainer’s Understanding Block:
- The purpose of this segment is to change perceptions of American Indian/Alaska Native peoples by sharing positive imagery and information that contradicts negative images and stereotypes.
- The purpose is to prepare participants for lunch and for later learning. It is not culturally appropriate for participants to eat lunch after being inundated with the type of information they were provided to this point in the training.

Training Activity: Lecture and Power Point

Trainer’s Script:
Who can name contributions that indigenous peoples have made to our contemporary society?

Agriculture: American Indians are known for introducing and cultivating a number of plants and medicines. For example, American Indians of many tribes grew the “three sisters”; corn, beans and squash. They grew these plants together: the corn provided a support for the beans to grow on, while the squash held moisture in the ground to support all three. When eaten together, the “three sisters” form a complete protein. Other “new world” foods cultivated by American Indians include, chile peppers, avocados, tomatoes, vanilla, various nuts and seeds, and cacao. The Maya developed the method to processing cacao and the drink was enjoyed mostly by nobility.

Pharmacopoeia: American Indians were inextricably bound to their environment. Plants like sage, tobacco, white willow (aspirin), Echinacea, coca leaves have medicinal properties that are still utilized today.
The Arts: TC Cannon, a graduate of the Institute of American Indian Arts in Santa Fe, New Mexico, is known for his sophisticated use of color and style coupled with political context, gave voice to a new generation of socially aware modern Native American artists and writers. He passed at the age of 31.

- Pablita Velarde, a Native woman from Santa Clara Pueblo was best known for her “earth paintings.” Ms. Velarde prepared the paints she used from mineral and rock elements. She was also known for a series of paintings she created for Bandelier National Monument in New Mexico and paintings derived from techniques derived from Navajo sand painting.

- Kevin Red Star, Crow, and graduate of the Institute of American Indian Arts, was born and raised on the Crow Indian Reservation in southeastern Montana. He has become known as the visual historical and ambassador for the Crown Indian nation.

- Allan Houser, Chiricahua Apache, is a renowned sculptor, painter and teacher. His parents, Sam and Blossom Haozous, were prisoners of war for 27 years. His work has been featured all over the world. Allan’s father was with the small band of Chiricahuas who went with Geronimo when he left the reservation. Geronimo and the band surrendered to the U.S. Arm in 1886 in northern Mexico.

Navajo weaving: Navajo blankets are rugs are world renowned for their beauty and timelessness. Navajo say they learned to weave from Spider woman, and their first loom was the sky, the earth the cords and their tools sunlight, lightening, white shell and crystal.

American Indian Dance a number of different dances are performed at pow-wows or special occasions. The dances are often a means of storytelling. For example, the Hoop Dance is said to have originated with the Anishinaabe people and the dances depict stories of the eagle, snake and butterfly. The grass dance may represent the story of a scout looking for campsites or may tell about a hunt or warrior’s exploits.

The U.S. Constitution: At one time the Mohawk, Oneida, Seneca, Cayuga, Onondaga, (also known as the Six Nations Confederacy of the Iroquois League or the Haudenosaunee) were at war. Dekanaweda, who was called the Peacemaker, sought out each of the tribes, meeting first with the leader of the Onondaga people, Hiawatha.

Together the two spread the word of peace. To demonstrate the strength of unity, Dekanaweda broke a single arrow in half. He then tied five arrows together and showed that they could not be broken. He told the people that individually, we are weak, but together we are strong. After the nations embraced peace, the people gathered in celebration, uprooting a white pine tree under which they buried their weapons (the origins of “bury the hatchet”). The tree was replanted and is known as the Tree of Peace, which symbolizes the law by which the Haudenosaunee came to live by\textsuperscript{19}. The Great Laws of Peace are codified in the Wampum Belt that represents all of the nations of the Iroquois confederacy.

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\textbf{PowerPoint Slide:}

\begin{center}
\textbf{Contributions}
What have American Indian Alaska Natives contributed to contemporary society?
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Segment 5: Tribal Sovereignty

Activity 5A: Tribal Sovereignty

Activity Time: 10 min

Materials and pre-training preparation:
- PowerPoint Presentation
- Participant’s Workbook Page(s):

Learning Objectives:
- **K1.** The participant will understand the relationship between U.S. history and the Indian Child Welfare Act (ICWA), and will be able to identify three events that led to the passage of ICWA.
- **K4.** Participants will recognize that tribes are sovereign nations and that being American Indian/Alaska Native is both a political and cultural distinction.
- **K6.** The participants will be able to identify engagement and teaming with tribes as a part of the new practice model.
- **S1.** Participants will demonstrate awareness of culturally appropriate engagement for the purpose of identifying American Indian/Alaska Native children.
- **V1.** Participants will value engaging and teaming with tribes, tribal service providers and designated ICWA agents and advocates as resources for decision making, ICWA compliance, and implementation of the Practice Model.
- **V2.** Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe to ensure positive child welfare outcomes and ICWA compliance.

Trainer’s Understanding Block:
- The purpose of this segment is intended to help participants understand the unique status of tribes as sovereign nations, its relationship with the United States, and why Congress was compelled to adopt the Indian Child Welfare Act.
- This segment is intended to provide the foundation for understanding the provisions of ICWA relating to tribes including noticing, jurisdiction and placement.

Training Activity: Lecture
It is helpful for the trainer to emphasize that the relationship between the United States and Indian tribes is not based on race, but rather the tribes’ status as sovereign nations.
**Trainer’s Script:**

Indian tribes are politically and culturally distinct entities that maintain unique culture, language and history. Individual American Indians and Alaska Natives are politically and culturally distinct, and are citizens of three political entities: their tribe, their state, and the United States. Indian tribes retain inherent powers of self-government which includes the authority to make and enforce laws, raise revenue and determine its membership (citizenship). It is a common misconception that the relationship between Indian tribes and the United States is based on race. The special relationship between the U.S. and Indian tribes is based on the tribes’ status as a sovereign government. Tribal governments predate the Constitution and have long been viewed as distinct political entities that are unconstrained by constitutional provisions that limit federal or state authority; states\(^20\).

In the early 1800s, United States Supreme Court Chief Justice John Marshall laid the groundwork for what would become the unique relationship between the federal government and Indian tribes that we have today. In *Cherokee Nation vs. Georgia*, Marshall identified Indian tribes as domestic dependent nations “in a state of pupillage; their relation to the United States resembles that of a ward to his guardian.”\(^21\) The United States assumed the role of a fiduciary with a trust responsibility towards tribes. The trust responsibility has evolved into a legally enforceable obligation of the United States. In the role it created as trustee of Indian affairs, the U.S. assumed the responsibility to, among other things, protect Indian treaty rights, Indian lands, tribal resources and assets (for example, the EPA has an obligation to protect tribal natural resources; the Department of Energy has the obligation to ensure that tribal energy needs are met, etc.); provide healthcare, education and other services; and protect tribal government.

The federal trust responsibility is afforded only to *federally-recognized* Indian tribes. If a tribe is an unrecognized tribe, it means the federal government does not owe these obligations to that tribe. During the Termination Era (approximately 1954-1964) the federal government terminated its recognition of 109 Indian tribes. Termination meant that the tribes’ lands were withdrawn from trust status, federal criminal jurisdiction was passed to states, and federal aid to tribes ended, including healthcare, education and public safety. A number of tribes have been reinstated, while others have not been able to acquire federal recognition. Approximately 50 unrecognized Indian tribes are in California.

In 1978, Congress declared that part of its trust responsibility to Indian tribes included protecting the best interest of American Indian children, and promoting the stability and


\(\text{\textsuperscript{21}}\) *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831) at 16-17.
security of Indian tribes and families. ICWA is a remedial statute, meaning that ICWA meant to prevent the unwarranted break-up of Indian families and, when a child must be removed from the family, sets minimum standards that must be followed for identifying Indian children, providing services, and placing Indian children in culturally appropriate homes. Additionally, the ICWA provides assistance to tribes to provide child and family service programs in furtherance of its trust responsibility. ICWA is intended to ensure the indiscriminate and biased interference with Indian families of the past does not recur.

Tribes exercise their sovereignty in a number of different ways with regard to child welfare. Many tribes offer prevention and rehabilitative services and have designated a representative (ICWA program manager, tribal attorney, etc.) to receive notice of dependency proceedings involving Indian children. Tribes may also define criteria for expert witnesses, participate in permanency planning (including tribal customary adoption) and/or assert jurisdiction and handle child dependency matters in their own courts. Tribes have the discretion to choose their level of involvement in the case. If a tribe intervenes, the tribe is then a party to the case and is legally entitled to the same rights as other parties to the case. The tribe may designate a representative to appear in court on the tribe’s behalf, or, if they are geographically too far away, may participate by phone.

It is best practice to engage with ICWA representatives, social workers and advocates as early in the case as possible as they can be an important resource in serving the families and in the decision-making process. Research demonstrates that keeping children connected to their extended families and tribes improves child welfare outcomes. Remember, even if the child’s tribe does not intervene or assume jurisdiction, it is still an ICWA case.

Other tips for social workers:

- Learn about the tribe(s) in your county and state. You can obtain a copy of ICWA designated agents at http://www.tribal-institute.org.
- Communicate with tribes as though you were contacting the governor’s office of a neighboring state. Show the same level of respect and adhere to appropriate protocols as you are dealing with representatives of a sovereign nation.
- Respectfully consider what the tribe has to say; otherwise the tribe may decide to pursue legal avenues which could be timely and costly. If respect and courtesy is established early on in the relationship there is a greater potential for collaboration on case options. The more options, the better chances for positive outcomes for Indian children.
- Attempt to resolve the case informally before having to resolve the case before a judge.

“Let the Spirit Lead…” ICWA: In the Best Interest of the Indian Child | Trainer’s Guide October 2015
End of Activity

PowerPoint Slide

Tribal Sovereignty: Trust Relationship

- Relationship established by U.S. Supreme Court Chief Justice John Marshall in Cherokee Nation v. Georgia (1831)
- Indian tribes are domestic dependent nations
- Indian tribes are not states
- Relationship between the United States federal government and Indian tribes
- Indian tribes have treaty rights
- Indian tribes are sovereign entities

Tribal Sovereignty: Political Entities

- Indian tribes are culturally distinct entities with unique cultural, language, and history
- Indian tribes retain inherent powers of self-government
- Indian tribes retain their own constitutions, governments, and laws
- Indian tribes have the authority to make laws, impose taxes, and determine membership

Tribal Sovereignty: Child Welfare

- Through ICWA Congress declared part of its trust responsibility to tribes to include preserving the best interests of Indian children, including the safety and security of Indian tribes and families
- Sovereignty and Child Welfare
- Offering prevention and rehabilitation services to Indian families
- Designating ICWA representatives to receive notice of dependency proceedings involving Indian children
- Defining special adoptions criteria
- Total Sovereignty adoption
Segment 6: ICWA Requirements and Social Work Practice

Total Segment Time: 100 min

Activity 6A: Inquiry and Noticing

Activity Time: 20 min

Materials and pre-training preparation:
- PowerPoint slides
- Participant’s Workbook Page(s):
- Video: FACES

Learning Objectives:
- **K4.** Participants will recognize that tribes are sovereign nations and that being American Indian/Alaska Native is both a political and cultural distinction.
- **K5.** Participants will be able to identify five basic provisions of the Indian Child Welfare Act.
- **K6.** The participants will be able to identify engagement and teaming with tribes as a part of the new practice model.
- **S1.** Participants will demonstrate awareness of culturally appropriate engagement for the purpose of identifying American Indian/Alaska Native children.

Trainer’s Understanding Block:
- The purpose of this segment is to assist participants in understanding why inquiry and proper noticing is so critical.
- The goal of the skill-building activity is to get the participants to identify the grandmother as the person who has the inquiry information.

Training Activity: Lecture/Skill-building Activity

Trainer’s Script:
Native American children are disproportionately represented in the child dependency system. Despite comprising approximately 1% of the general population, Native children make up more than 2% of children in dependency. In 2014, there were 90,000 open referrals. In only 44,000 of those cases was any inquiry made as to whether the child was an Indian child. In order to ensure ICWA compliance and reduce disproportionality, every Indian child must be identified.

INQUIRY

“Let the Spirit Lead...” ICWA: In the Best Interest of the Indian Child | Trainer’s Guide
October 2015
How do we identify Indian children? Many children who are eligible for the protection of the Indian Child Welfare Act do not appear to be Indian. Many are of mixed racial heritage, African American-Indian, Caucasian-Indian, Latino-Indian, and Asian/Pacific Islander-Indian. In the southwest area of the country, including California, many children have Spanish or Hispanic surnames. Do not assume that a child is not American Indian because the child does not look American Indian, or because the surname would indicate a different ethnic group.

The only way to establish that a child is Indian is to ask the mother, father, grandparent, custodian or guardian if the child is, or may be, Indian. Depending on the age of the child, the child may also be asked. Most people who are Indian can provide detailed information about where they are from and who their relatives are. In some cases, this information may be less available if the family has lived in an urban area for a long period of time or for more than one generation, or if an individual was adopted into a non-Indian family and does not have access to the information. If the response is yes, it is important to ascertain what tribal affiliation the Indian child might have. It is imperative to get the name of the tribe, e.g., Yurok, Karuk, San Pasqual, Morongo, Chumash, Cherokee, Yaqui, Tlingit, Navajo, Pojoaque, Pueblo, Lakota, etc. A listing of federally recognized tribes and their designated ICWA agents are periodically published in the Federal Register.

The court, social services, probation and any party seeking foster care placement, guardianship or adoption (including tribal customary adoption (the petitioner)) all have an ongoing duty to inquire about whether a child is an Indian child. If there is reason to know an Indian child is involved in the proceeding, further inquiry must be made. Inquiry should be made at the initial intake and again if the child will be placed in foster care.

Reason to know exists when:
- A person having an interest in the child provides information suggesting the child is a member or eligible for membership in a tribe and/or one or more of the child’s biological parents, grandparents or great grandparents was or is a member of a tribe;
- The residence or domicile of the child, parents, or Indian custodian is in a predominantly Indian community
- The child or family has received tribal services or benefits or federal services available to Indians.

**Best practice tip:** Presume the child is an Indian child unless and until information is discovered that indicates otherwise.

Inquiry should be made of anyone who reasonably could be expected to have information regarding the child’s membership in a tribe or eligibility for membership in a
tribe and include: parents, Indian custodian, extended family members; the child (if old enough); and tribes. Information for contacting the tribes can be found in the Federal Register listing of ICWA agents, the Federal Register listing of federally-recognized tribes or by contacting the BIA or CDSS.

When inquiry is made, the following questions should be asked:
- Names, former names, aliases, maiden names of biological parents, grandparents, great grandparents and Indian custodians
- Current and former addresses
- Birthdates
- Places of birth and death
- Tribal enrollment numbers
- Name of tribe(s) and contact information
- Any other identifying information, if known.

**Best practice tip:** If a child is moving into permanency on the adoption track and the records do not indicate whether the child is Indian or may be Indian, make the inquiry before proceeding with the adoption. Document the information clearly in the files.

**NOTICE**

Like inquiry, notice is critical to ensuring ICWA compliance. Notice allows a tribe to determine whether a child is an Indian child. Notice also advises the tribe of pending proceedings and ensures the opportunity to intervene or assume jurisdiction of the case. Without notice to the tribe, ICWA’s underlying policy is undermined.

Notice must be provided when the Court, social worker, probation officer or petitioner knows or has reason to know an Indian child is involved in the proceedings. The Court, social worker, probation officer or petitioner are responsible for providing notice to 1) the parents or Indian custodian; 2) all tribes of which the child may be a member or eligible for membership; 3) any agents for the tribe who may be designated by the tribe to receive notice; 4) the Bureau of Indian Affairs and 5) the Secretary of the Interior. Information for contacting the tribe(s) can be found in the Federal Register listing of ICWA agents, the Federal Register listing of federally recognized tribes or by contacting the BIA or CDSS.

Notice is provided by registered mail with return receipt requested. Notice must include the following information:
- Hearing information (date, time, type)
- Identifying information of child and name of the tribe
- Copy of the petition

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• Statement of the rights of the party receiving the notice, including: the right to intervene, to transfer the case to tribal court, to counsel, and the potential legal consequences on custodial/parental rights
• Statement that information in the notice and other court documents is confidential and anyone receiving notice shall maintain confidentiality
• Family history information (names, addresses, birthdates, birthplaces, tribal enrollment information and any other identifying information if known)
• Child’s birth certificate
• Location and contact information for the court
• Information about all parties notified (except where disclosure creates a risk of harm as a result of domestic violence, child abuse, sexual abuse, stalking)

Notice must be provided whenever it is known or there is reason to know the child involved in the preceding is an Indian child. Notice must be received ten days prior to the hearing except if the hearing is a detention hearing, and then notice must be given as soon as possible after filing the petition. If the court, social worker, probation officer or petitioner subsequently receives information that is required in the notice that was not previously provided, notice must be sent again. Those giving notice must file proof of notice with the court in advance of the hearing.

Anyone who knowingly and willfully falsifies or conceals a material fact concerning whether the child is an Indian child or who counsels a party to conceal this information is subject to court sanction.

Inquiry Skill building Activity: The trainer will hand out “Tips for Following Protocol” and “Reasons Why Some People Do Not Claim Indian Heritage” and facilitate discussion about engaging with Indian families. Trainer will show the FACES video.
The trainer will review with participants the concept of cultural humility and share a vignette. The trainer will ask participants to inquire and identify Indian heritage. Participants will have to correctly engage in the vignette in order to identify the child’s tribe and tribal heritage.

Inquiry Vignette
You, the social worker, are visiting a family and notice American Indian art / artifacts in the living room. This includes a Native American poster and a figurine of an American Indian and a buffalo, among other items. During the initial investigation you learn that the child, his mother, his mother’s sister, and sometimes the child’s maternal grandmother are sharing the two bedroom apartment. During this visit only the mother and sister are visiting with you. You state that if they are American Indian/Alaskan Native there may be additional services available to the child and family and ask the mother and sister whether they or the child are members of an American Indian or Alaskan
tribe. They both answer “no.” Then you ask whether they know if the father is a member of a tribe. The mother answers “no”, but her sister states, “I asked him where his family came from and he said originally they are from Montana, and he mentioned a tribe but I can’t remember which one.” What do you do next to identify whether this is an Indian child?

Possible Answers:
1. Contact the child’s father. The trainer will state that the father is unavailable.
2. Try to contact the other members of the child’s father’s family. The trainer will state they are unavailable.
3. Ask the child. Trainer will state the child does not know.
4. Ask if there is anyone else who may know what tribe the father may be a member of. They will say “the child’s grandmother.”
5. Ask the child’s grandmother – who will say the father is a member of the Blackfeet tribe in Montana.

End of Activity

PowerPoint Slides:
Section 6: ICWA Requirements and Social Work Practice

ACTIVITY 6B: Active Efforts vs. Reasonable Efforts

Activity Time: 15 min

Materials and pre-training preparation:
- PowerPoint slides
- Participant’s Workbook Page(s):
- Handout: Active Efforts

Learning Objectives:
- K5. Participants will be able to identify five basic provisions of the Indian Child Welfare Act.
- K6. The participants will be able to identify engagement and teaming with tribes as a part of the new practice model.
- S2. Participants will demonstrate the ability to change reasonable efforts into active efforts.
- V1. Participants will value engaging and teaming with tribes, tribal service providers and designated ICWA agents and advocates as resources for decision making, ICWA compliance, and implementation of the Practice Model.

Trainer’s Understanding Block:
- The purpose of this activity is to help participants understand the qualitative aspects of child welfare social work practice.

Training Activity: Lecture/Skill-building Activity
The trainer is advised to prepare examples for this activity that stimulate the creative thinking of the participants and not to accept ‘business as usual’ answers often connected to ‘case management’ services in child welfare practice and government services in general. The trainer should clearly describe “active efforts” using illustrative examples. Trainer should make sure to convey that these provisions are all related and are intended to achieve the purpose of ICWA.

Trainer should remind the participants during the following discussion that active efforts are in response to historic traumas that result in the distrust by many families of social workers and government agencies. The trainer should emphasize that the active efforts responsibility is immediate when there is reason to know the child is an Indian child.

Trainer’s Script:
ICWA requires that any party seeking to effect foster care or the termination of parental rights to satisfy the court that active efforts have been made to provide services
designed to prevent the breakup of the Indian family and that these efforts were unsuccessful.

What are active efforts compared to reasonable efforts? The “active efforts” standard requires more effort than a “reasonable efforts” standard. An Alaska court cited an ICWA commentator who distinguished between active and passive efforts: “passive efforts entail merely drawing up a reunification plan and requiring the ‘client’ to use ‘his or her own resources to bring...it to fruition.’” A. M. v. State, 945 P. 2d 296, 306 (Alaska 1997).

A rule of thumb is that “active efforts” refers to engaging the family while “reasonable efforts” refers to providing referrals to the family, and leaving them on their own to seek assistance.

Some courts require proof that all active efforts to provide parents with adequate rehabilitative services have been exhausted, but others do not require an undertaking of futile or nonproductive efforts. A state or private party cannot use the argument that it lacks resources to provide active efforts in order to refuse the mandate to provide active efforts. There are no exceptions in the ICWA to the mandate.

Generally, what constitutes “active efforts” is specific to the given situation, including the governing law and accepted social work standards, because such efforts are aimed at remedying the basis for the underlying proceedings. The types of required services and duration for providing such services also depend on the facts of the case, but should be culturally appropriate, including utilizing available resources of the child’s tribe, extended family, tribal and other Indian social services agencies, and individual Indian caregiver service providers. In February 2015, the BIA adopted its Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, which recommend active efforts as a best practices strategy. The handout in the Participant’s Workbook is based on the Guidelines.

In order to meet the needs of the child and the family, and to avoid case challenges later, it is recommended that the case be reviewed to determine whether active efforts were provided as opposed to reasonable efforts prior to filing a petition to terminate parental rights.23

Skill-building Activity
Participants are asked to refer to their workbook page, “What Kind of Effort?” and determine what activity is considered an “Active Effort” and what is considered a “Reasonable Effort”. Participants will turn reasonable efforts into active efforts.

PowerPoint Slides:

**Active Efforts**

ICWA requires any party seeking to effect foster care or the termination of parental rights to satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts were unsuccessful.

**Active Efforts**

- What constitutes active efforts is assessed on a case-by-case basis.
- This requires the provision (or offer) of culturally appropriate remedial services and rehabilitative programs designed to prevent the break-up of the family.

**Active Efforts At A Glance**

- Active Efforts begin immediately if you have reason to believe this is an Indian child.
- Active Efforts are meant to help families believe in the process rather than become dependent.

**Active vs. Reasonable Efforts**

The “active efforts” standard requires more effort than “reasonable efforts.” An Alaska court cited an ICWA commentator who distinguished between active and passive efforts: “‘Passive efforts’ entailed merely drawing up a reunification plan and requiring the ‘client’ to use the resources to bring it to fruition.”

**Skill Building Activity: Active Efforts**

Active efforts require utilizing the available resources of the child’s tribe, extended family, tribal and other Indian social services agencies, and individual Indian caregiver service providers.
Segment 6: ICWA Requirements and Social Work Practice

ACTIVITY 6C: Placement

Activity Time: 15 min

Materials and pre-training preparation:
- PowerPoint Presentation
- Participant’s Workbook Page(s):

Learning Objectives:
- **K4.** Participants will recognize that tribes are sovereign nations and that being American Indian/Alaska Native is both a political and cultural distinction.
- **K5.** Participants will be able to identify five basic provisions of the Indian Child Welfare Act.
- **K6.** The participants will be able to identify engagement and teaming with tribes as a part of the new practice model.
- **K8.** Participants will understand ICWA placement preferences and that they are important to one of ICWA’s purposes.
- **V1.** Participants will value engaging and teaming with tribes, tribal service providers and designated ICWA agents and advocates as resources for decision making, ICWA compliance, and implementation of the Practice Model.
- **V2.** Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe to ensure positive child welfare outcomes and ICWA compliance.

Trainer’s Understanding Block:
- This segment’s purpose is to inform participants of ICWA’s requirements with regard to a child’s placement.
- This segment is intended to demonstrate the connection between a child’s placement and the purpose of ICWA.

**Tips for presenting this training activity:** See tips for presenting in the previous section. Trainers should emphasize that participants cast their nets as widely as possible, utilizing whatever tools and contacts they can to look for possible family connections for placements. Encourage participants to make connections with whoever might know more about the child’s family of origin.

Trainer should make sure to convey that these provisions are all related and are intended to achieve the purpose of ICWA.

**Training Activity:** Lecture
Trainer’s Script:
Why does ICWA have a list of preference placements? ICWA contains placement preferences to ensure the Indian child remains connected to his or her family and tribe.

ICWA prescribes a specific order of placement for an Indian child who is in foster care or a pre-adoptive placement. A child in such placement must be placed in the least restrictive setting which most approximates a family and in which the child’s special needs, if any, may be met. The child must be placed within reasonable proximity to his or her home, also taking into account any special needs of the child. In the absence of good cause to the contrary, the placement preferences are as follows:

1. a member of the Indian child’s extended family;
   Who is extended family? Extended family is defined by the law or custom of the Indian child’s tribe or, in the absence of such, is a person who is 18 years old or older, and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin or stepparent.

2. foster home 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 Indian child’s needs.

For an Indian child who will be in adoptive placement, the preferences are as follows:

1. a member of the child’s extended family;

2. other members of the Indian child’s tribe; or

3. other Indian families.

There is no fourth item in the order of preference that allows for adoption of Indian children by non-Indians.

A different order of placement may be used if the Indian child’s tribe establishes a different order of preference by resolution, and the agency or court affecting placement but abide by this preference as long as it is the least restrictive setting appropriate to the needs of the child.

It is important to remember that 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 applies in meeting...

ICWA placement preference requirements. Why is this important? Recall that bias played a major role in the unwarranted removal of Indian children from their homes: social workers often based their decisions to remove on their own standards of cleanliness, child-rearing, and care with no understanding or consideration given to the cultural standards of the community. Additionally, it was long believed that American Indians were incapable of properly caring for their children, and were placed with non-Indian families.

Placement preferences also apply whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, except where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

ICWA does not prevent the emergency removal of an Indian child who is a resident of or domiciled on a reservation, but temporarily located off the reservation or the placement of that child in foster care in order to prevent physical damage or harm to the child. However, the authority involved in the emergency removal or placement must ensure it terminates immediately when it no longer is necessary to prevent imminent physical damage or harm to the child. The intervening authority must expeditiously initiate a child custody proceeding, transfer the child to the tribe's jurisdiction or return the child to the parent or Indian custodian as may be appropriate.

End of Activity
### Emergency Removal

However, the authority involved in the emergency removal or placement must ensure the removal or placement terminates immediately when it is no longer necessary to prevent imminent physical damage or harm to the child. The intervening authority must expeditiously initiate a child custody proceeding, transfer the child to the tribal jurisdiction, or determine the appropriate status and placement of the child as may be appropriate.

### Placement At A Glance

- Placement with family/intended family
- Work with Tribal ICWA worker to identify placement options

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ICWA does not prevent the emergency removal of an Indian child who is a resident of or domiciled on a reservation, but temporarily located off the reservation or the placement of that child in foster care in order to prevent physical damage or harm to the child.
Segment 6: ICWA Requirements and Social Work Practice

ACTIVITY 6D: Concurrent Planning and Tribal Customary Adoption

Activity Time: 10 min

Materials and pre-training preparation:
- PowerPoint Presentation
- Participant’s Workbook Page(s):

Learning Objectives:
- **K4.** Participants will recognize that tribes are sovereign nations and that being American Indian/Alaska Native is both a political and cultural distinction.
- **K5.** Participants will be able to identify five basic provisions of the Indian Child Welfare Act.
- **K6.** The participants will be able to identify engagement and teaming with tribes as a part of the new practice model.
- **K9.** Participants will recognize guardianship and tribal customary adoption as concurrent planning options for American Indian and Alaska Native children.
- **V1.** Participants will value engaging and teaming with tribes, tribal service providers and designated ICWA agents and advocates as resources for decision making, ICWA compliance, and implementation of the Practice Model.
- **V2.** Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe to ensure positive child welfare outcomes and ICWA compliance.

Trainer’s Understanding Block:
- The purpose of this segment is to inform participants of ICWA concurrent planning requirements and tribal customary adoption.

Training Activity: Lecture

Trainer’s Script:

Concurrent planning is a practice approach used by social workers when the worker and the family simultaneously plan for reunification and alternate permanent placement if reunification is not possible.

Tribal customary adoption (TCA) is recognized only in California and is the same as conventional adoption except parental rights are not terminated. TCA is by and through the customs, traditions, or law of an Indian child’s tribe. It becomes a permanency option once the tribe affirms that the child is an Indian child. Only the tribe can select TCA and it TCA cannot be recommended without consultation with the child’s tribe.
Several important things to remember about TCA:
- The adoption assessment must address TCA as an adoption and the SW must consult with the tribe to determine whether it is an option.
- The tribe or its designee must complete a TCA home study before approval of TCA placement.
- If the tribe selects TCA, the court may grant a 120 day continuance for completion of TCA process.
- The tribe must complete a home study and draft the TCA order.
- Full faith and credit must be afforded the TCA order.
- Meaningful consultation with tribes is key to an effective child welfare practice and to ensure ICWA compliance. It is not making decisions and then “checking in” with the tribe, but rather an ongoing partnership that is inclusive of the tribe, its opinions and decisions. The child’s tribe is an important part of the TCA process, in particular, because TCA cannot happen unless the child’s tribe selects TCA as the permanent plan, and only the tribe can write the TCA order.

- How should the agency and the court approach concurrent planning in an ICWA case?
- How involved should the child’s tribe be in concurrent planning?
- What unique considerations are there in permanency planning for Indian children?
- What different permanency options should be considered for Indian children?

End of Activity

PowerPoint Slides:
Tribal Customary Adoption

Finalization of TCA requires:
- Tribe completion of home study and TCA
- Filing of adoption petition
- Filing of final report on TCA by agency
- Full facts and credits needed for TCA order by juvenile court
- Consent of parent or Indian custodian not required.

Concurrent Planning At A Glance

- Is part of standard child welfare practice
- Remember to inform family and tribe of tribal customary adoption as an option early in the case
- Tribal customary adoption is done by the tribe, not the department.
**Section 6: ICWA Requirements and Social Work Practice**

**ACTIVITY 6E: Expert Witness**

**Activity Time: 10 min**

**Materials and pre-training preparation:**
- PowerPoint slides
- Participant’s Workbook

**Learning Objectives:**
- **K5.** Participants will be able to identify five basic provisions of the Indian Child Welfare Act.
- **K6.** The participants will be able to identify engagement and teaming with tribes as a part of the new practice model.
- **V1.** Participants will value engaging and teaming with tribes, tribal service providers and designated ICWA agents and advocates as resources for decision making, ICWA compliance, and implementation of the Practice Model.
- **V2.** Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe to ensure positive child welfare outcomes and ICWA compliance.

**Trainer’s Understanding Block:**
- The purpose of this segment is to help participants understand the qualifications of the expert witness and the requirements of testimony in the courts.

**Training Activity: Lecture**

It is highly recommended that a guest presenter with substantial court experience train this segment’s material on expert witnesses. The guest presenter should be able to lead the discussion on issues related to expert witnesses and answer questions posed by the participants. Suggestions for the guest presenter include a judge, lawyer, or trainer with significant court experience.

**Trainer’s Script:**

A foster care placement of an Indian child may not be ordered until the party seeking placement establishes that 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. Evidence supporting this conclusion must be supported by the testimony of one or more qualified expert witnesses. Additionally, no termination of parental rights may be ordered until a determination is made, that the continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian
child. Evidence supporting this conclusion must include testimony of one or more qualified expert witnesses.

A qualified expert witnesses serves three purposes: 1) to prove the court with information about the social and cultural aspects of Indian life in order to diminish the risk of any cultural bias; 2) to address whether the child was in imminent danger at the time of removal when the removal took place without remedial services to prevent it; and 3) to address whether decisions are being unduly influenced by inappropriate cultural biases. Additionally, qualified expert witness testimony is not required to support an active efforts finding, but they can provide information about whether 1) there were active efforts to prevent removal (offering or providing culturally appropriate remedial/rehabilitative services to prevent the breakup of the family) or 2) to provide culturally appropriate reunification services?

Provided that the individual is not an employee of the person or agency recommending the foster care placement or termination of parental rights, a qualified expert witness may include, but is not limited to, a social worker, sociologist, physician, psychologist, traditional tribal therapist and healer, tribal spiritual leaders, tribal historian, or tribal elder. County social workers are disqualified from being expert witnesses in the same county where they are employed.

A person most likely to be considered such an expert is at least one of the following:

- A member of the child’s tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices;
- A person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices with the child’s tribe;
- A professional person with substantial education and experience in the area of his or her specialty.

It is helpful if the petitioner identifies the expert witness, or witnesses, upon initial contact with the child and solicits such witnesses from the tribe. If no tribe is involved, begin the recruitment of available and willing qualifying expert witnesses early and avoid waiting until the court hearing is near.

The Judicial Council of California, Center for Families, Children, and the Courts’ Tribal Projects Unit has posted a list of individuals who are identified as qualified experts for purposes of the ICWA. This list is a resource, and any agency or individual seeking to
use an individual on the list is responsible for independently evaluating that individual for suitability for an ICWA proceeding. Visit: [http://www.courts.ca.gov/8105.htm](http://www.courts.ca.gov/8105.htm)

**Tribal and Expert Witnesses**

Frequently, petitioners request expert witness testimony from tribes. Tribes can provide testimony to the relevance of cultural norms in a particular case and county/state compliance or lack of compliance. The tribal expert witness may be a tribal member, social worker, ICWA worker, or professional expert. Tribes outside of California often decline to provide their own expert witness – they seldom have the resources to do so.

It is the responsibility of the removing party to obtain expert witness testimony. However, in some cases, it is beneficial to the tribe to provide a rebuttal witness. It may also be beneficial for a rebuttal witness to be provided by the attorney for the children as well as the attorney(s) for the parent(s). These options are seldom used and need to be encouraged.

Expert witness testimony can have an enormous impact on a case and it is recommended that counties always work with tribes to secure qualified expert witnesses. **Best practice tip:** contact and engage the qualified expert witness as soon as the case begins, including at or before disposition.

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**PowerPoint Slides:**

- **Qualified Expert Witness:**
  - **Purpose**
  - Evidence supporting this conclusion must include the testimony of one or more qualified expert witnesses.
  - A qualified expert is a person who can address the issue of whether continued custody by a parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

- **Qualified Expert Witness:**
  - **Purpose**
  - The purpose of expert witness testimony is to provide the court with information about the social and cultural aspects of Indian life in order to diminish the risk of any cultural bias.
  - Expert witness testimony addresses these issues:
    - Was the child in imminent danger at the time of apprehension when that removal took place without remedial services to prevent it?
    - Are decisions being unduly influenced by inappropriate cultural biases?
Segment 6: Current Events and Outcomes

ACTIVITY 6F: Current Events affecting ICWA/Outcomes from a Tribal Perspective

Total Segment Time: 45 min

Materials and pre-training preparation:
- PowerPoint Presentation
- Participant’s Workbook Page(s):
- Videos (Adam or Erwin)

Learning Objectives:
- K10. Participants will be able to describe two positive child welfare outcomes from a tribal perspective and will be able to identify legal consequences to non-compliance with ICWA.
- V1. Participants will value engaging and teaming with tribes, tribal service providers and designated ICWA agents and advocates as resources for decision making, ICWA compliance, and implementation of the Practice Model.
- V2. Participants will value keeping an American Indian/Alaska Native child connected to their community, culture, and tribe to ensure positive child welfare outcomes and ICWA compliance.

Trainer’s Understanding Block:
- This is intended to inform participants that, although there have been positive outcomes as a result of ICWA, it remains under contact attack.
- The segment also informs participants of any other changes to federal and/or state ICWA.

Tips for presenting this training activity: This is informs participants that ICWA is always being challenged. Trainers are encouraged to familiarize themselves with the information being presented. Trainers may also engage participants in a discussion about the challenges of ICWA cases.

Training Activity: Lecture
The trainer is encouraged to consult with an attorney or Tribal STAR with regard to the status of any current or pending lawsuits in order to provide the most up-to-date information and the state of the law.

Trainer’s Script:

There are a number of ongoing legal challenges to ICWA. Recall from the eLearning module, the case of Baby Veronica. The case was a voluntary adoption proceeding initiated by the girl’s mother, who at the time was the sole custodial parent. In 2009, a
non-Indian family wanted to adopt Baby Veronica, whose father is a member of the Cherokee Nation. The father, Dusten Brown, challenged the adoption, claiming he had not been properly noticed of the proceedings in accordance with ICWA. The father won the case, which had been challenged all the way to the South Carolina Supreme Court, and he won custody of his daughter in 2011. However, the adoptive parents petitioned the United States Supreme Court in 2012. The Court held that a non-custodial Indian father did not have rights under ICWA and remanded the case. The lower courts finalized the adoption and ordered Baby Veronica returned to her adoptive parents. The trainer should remind participants the role that bias played in the decision as they learned in the eLearning.

Carter et al. v. Washburn: Often referred to as the Goldwater lawsuit, this class action suit claims that ICWA is unconstitutional because it discriminates against Native American children. This lawsuit has been in the spotlight because of the resources devoted to the lawsuit and the media campaign ICWA opponents have funded. The lawsuit blatantly and intentionally misconstrues the law and is an attack not just on ICWA, but on tribal sovereignty.

Other challenges affecting ICWA:

- Tribally Approved Foster Homes: Tribes are now able to complete background checks, part of the process of approving foster homes for children in dependency
- New Statewide Practice Model: Best practices in California include partnering with Indian tribes to meet the needs of Indian children and families
- After 18 Care: AB 12 (Extended Foster Care) contains provisions to ensure ICWA applies to American Indian youth and that they are eligible for benefits
- US Department of Justice ICWA Compliance Initiative: In December 2014 during the White House Tribal Nations Conference, US Attorney General Eric Holder announced that the DOJ was launching an effort to actively identify state-court cases where the US can file briefs opposing the unnecessary and illegal removal of Indian children from their families and communities. The DOJ will collaborate with the Department of Interior (BIA) and Health and Human Services to promote compliance. Additionally, the initiative will promote training for state judges and agencies; promote Tribes’ authority to make placement decisions; track data about where ICWA is violated and take action to ensure ICWA compliance.

- The American Indian Enhancement (AIE) Project Toolkit provides resources to assist in developing programmatic infrastructure for child welfare agencies to improve outcomes for American Indian and Alaska Native families and children in the child welfare system.

The toolkit can be accessed at:
Trainee will show either Adam or Erwin video. The trainer will facilitate discussion about what ICWA has accomplished. The trainer and participants should review the ways in which ICWA was not followed and ask participants to give examples of how ICWA should have or could have been followed.

**PowerPoint Slide:**
ACTIVITY 7A: What stands out from today?

Activity Time: 15 min.

Materials and pre-training preparation:
- PowerPoint slides
- Participant’s Workbook Page(s):

Learning Objectives:
- K1-K10
- S1-S2
- V1-V2

Trainer’s Understanding Block:
The purpose of this section is to bring the day to a close, complete the evaluations and post-test and offer a blessing for the day’s learning and activities.

Training Activity:
The trainer asks participants what stands out from the day, and quickly reviews the questions asked earlier that were recorded on the white sheets.

The trainer reviews current health indicators that show poor health, mental health, and other outcomes for Tribal youth. The trainer discusses the findings that Tribal youth who maintain connections to their families and culture demonstrate better outcomes. Note that “tribal” as identified in the act itself does not have the same significance as being “tribal” in a historical context. Additionally, many “tribes” are unrecognized yet still function as tribes, maintaining their own culture, ceremonies, language, traditions, and systems of government.

The Spirit of ICWA intends to ensure access to culturally appropriate services and facilitating ties between the child, extended family, and Tribe, regardless of whether or not the tribe is federally or state recognized.

Review the Fact Sheet entitled “Following the Spirit of the Indian Child Welfare Act (ICWA)” in the Participant Workbook (and also in Appendix D). This document was developed with the Administrative Office of the Courts and the Casey Family Programs Breakthrough Series Collaborative. It explains the reasons why it is necessary to implement ICWA to non-recognized tribal members, and serves as a guide to understanding the benefits of providing culturally appropriate services to Native
American families from non-federally recognized tribes within the juvenile dependency and delinquency systems.

Trainer should review Best Practices Slides.
**ACTIVITY 8A: What did we get out of today? Post-Test, Evaluations, Wrap-Up**

**Activity Time:** 15 min.

**Materials and pre-training preparation:**
- PowerPoint slides
- Participant’s Workbook Page(s):

**Learning Objectives:**
- N/A

**Trainer’s Understanding Block:**
The purpose of this section is to bring the day to a close, complete the evaluations and post-test and offer a blessing for the day’s learning and activities.

**Training Activity:**
The trainer distributes evaluations and the post test. The trainer instructs the participants about how to complete the post-test, the amount of time participants have to complete it, and where to return the test. After all participants have completed the test and evaluations, the closing blessing should be offered.

**End of Activity**

**PowerPoint Slide:**
Glossary

Active vs. Reasonable Efforts
Active efforts require more than reasonable efforts. Active efforts describe direct work in engagement with Indian children and their families to assist them in meeting goals, while reasonable efforts describe non-direct practices such as referring a family to other services, which requires them to access their own resources in order to participate in those services.

Blood quantum
A method of defining the quantity of a person’s origins through their blood lines. Some tribes require a specific blood quantum, such as 1/8, in order to be eligible to formally enroll in the tribe.

Clan
A group of people tracing their descent from a common ancestor or family and united by a common interest or characteristics. Clan customs and traditions may, among other things, define relationships between members, or may bestow certain responsibilities on its members within the tribe.

Concurrent Planning
A child welfare system practice that requires social workers to begin discussing both reunification plans and alternative permanent placement plans early in their work together. Tribal customary adoption is a permanent planning option recognized by California law and must be considered during the concurrent planning process. Tribes must be consulted during this process as well.

Extended Family
ICWA states that the extended family of an Indian child is defined by the law, customs or traditions of the tribe. In the absence of law, custom or tradition, extended family is an adult grandparent, aunt or uncle, sibling, brother-in-law or sister-in-law, niece, nephew, first or second cousin or a stepparent.

Family
American Indians consider themselves kin to other American Indians and Alaska Native populations, who may or may not be direct biological relations. The concept of nuclear families is considered foreign to American Indians. Underlying this definition is the concept of relatedness, being connected to all Indian people regardless of tribe, location, or the status of families.

Historic Trauma
United States policies of forced assimilation, which included forced removal from tribal homelands, prohibition of spiritual and religious practices, resulted in trauma and loss to Native American children, families and communities. The grief resulting from cumulative
and compound traumas is unresolved for many, and has passed from generation to generation. Cultural Trauma is an attack on the fabric of a society, affecting the essence of the community and its members. Historical Trauma is the cumulative exposure of traumatic events that affect an individual and continues to affect subsequent generations. Intergenerational Trauma occurs when trauma is not resolved, subsequently internalized, and passed from one generation to the next.

Indian Country
The legal definition of Indian County may be found in federal statutes and regulations. Generally, Indian Country includes Indian reservations, certain select Indian communities, Alaska Native villages, Rancherias and Indian allotments. However, the term is often understood to mean Native American/Alaska Native people who are served through tribal organizations or services and communities not included in the legal definition that have substantial Native American/Alaska Native populations.

Inquiry
Inquiry, an important aspect of ICWA, is the act of timely identifying whether or not the child is an Indian child under the provisions of the law.

Kin or Kinship
Kin are relatives or family. Kinship are the bonds between individuals that, for American Indian/Alaska Native peoples, extend beyond blood relationships on both sides to friends and members of their clan or tribal community.

Moiety
Tribes often have two or more complimentary subdivisions (moieties) which, together, constitute the whole. Each is a part of a system that shares clan and tribal responsibilities. During ceremonies, each moiety will have different roles and responsibilities. Moieties, like clans, can be an additional resource in determining placement for an Indian child.

Notice
Notice is the process of completing required forms and providing them to Indian tribes as required by state and federal law. Notice of the proceedings is given to tribes, parents or Indian custodians and provides them the opportunity to identify whether the child is eligible to be a member or is a member, and the opportunity to intervene in the case.

Qualified Expert Witness
A qualified expert witness is asked to address whether continued custody of an Indian child by a parent or Indian custodian will likely result in serious physical or emotional damage to the child. A qualified expert witness must be either 1) a member of the child’s tribe, recognized by the child’s community as knowledgeable in tribal customs as
they pertain to family organization and child-rearing practices; 2) a person with substantial experience in the delivery of child and family services to Indians and has extensive knowledge of the prevailing social and cultural standards and child rearing practices with the child’s tribe; or) a professional person with substantial education and experience in the area of his or her specialty. A qualified expert witness cannot be the social worker assigned to the case or a social worker from the agency managing the case.

**Placement Preferences**
The order of preference for placement of the Indian child in out-of-home care.

**Relatedness**
Indian concepts emphasize that children are embedded within a complex and dynamic set of relations that include self, kin, and universe. A traditional American Indian belief is that all American Indians are related to one another.

**Tribal Customary Adoption**
California law allows Indian children and families to realize the permanency and support of adoption without the termination of parental rights, thereby, allowing for the continuation of cultural practices.

**Tribal Community**
An intimate relationship of members who are bound together by shared belief, values, ties of loyalty, and family. For example, among urban Indians, they may not come from the same tribes, but share a relationship based on like values, beliefs, and culture.

**Tribal Member**
An individual or family recognized by blood or kinship, as a part of a tribe, clan, or moiety, and entitled to participate in tribal events and governance.

**Tribe**
Sovereign Indian nations with inherent powers of self-government and self-determination. Tribes can be federally-recognized or non-federally recognized.
References and Bibliography


Slide 3

Let the Spirit Lead....

ICWA: In the Best Interest of the Indian child

Opening
Introductions
Housekeeping

Slide 4

LEARNING OBJECTIVES

Participants will understand the relationship between U.S. history and ICWA and will be able to identify three events that lead to the passage of ICWA.

Participants will understand regional differences of California Indian history and will identify two regional historic events that resulted in historical trauma.

The participant will identify two examples of the effects of historical trauma that affect engaging and working with Indian children, families, and tribes.

Participants will recognize that tribes are sovereign nations and that being American Indian/Alaska Native is both a political and cultural distinction.

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LEARNING OBJECTIVES

The participant will be able to identify five basic provisions of the Indian Child Welfare Act.

The participant will be able to identify engagement and teaming with tribes as part of the new practice model.

The participant will demonstrate awareness of culturally appropriate engagement strategies for the purpose of identifying Indian children in their case load.

The participant will understand the differences between reasonable and active efforts, that active efforts begin immediately when there is reason to know a child is American Indian or Alaska Native and will be able to change a reasonable effort into an active effort.
LEARNING OBJECTIVES

- The participant will understand ICWA placement preferences and that they are important to one of ICWA’s purposes.
- The participant will recognize tribal customary adoption and guardianship as concurrent planning options for American Indian and Alaska Native children.
- The participant will be able to describe two positive child welfare outcomes from a tribal perspective and will be able to identify legal consequences to non-compliance with ICWA.
- The participant will value engaging and teaming with tribes, Indian services agencies, ICWA agents and ICWA advocates as resources for decision making, ICWA compliance and implementation of practice model.

ICWA: Training Overview

“... vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are member of or are eligible for membership in an Indian tribe...”

—The Indian Child Welfare Act—

Training Overview

- eLearning Review
- ICWA Historical Context and Basic Provisions
- Historical Trauma
- Tribal Sovereignty
- Remedying Bias
- ICWA Requirements and Social Work Practice
- Outcomes from a Tribal Perspective
Indian Child Welfare Act: Bias, Media and Historical Context

eLearning Review

What did you learn?

• How media has shaped and limited our awareness and understanding of American Indian/Alaska Native peoples (also referred to as Native American);

• The Indian Child Welfare Act (ICWA) is a remedial act intended to address the historical trauma experienced by Indian/Native American people that results in distrust and challenges to engagement with Native families;

• The purpose of ICWA is to restore and maintain connections between Indian children, their families and their culture;

Who is an Indian child?

• Any unmarried person who is less than 18 years of age who is also

• A member of an Indian tribe or

• Eligible for membership and

• Is the biological child of a member of an Indian tribe

What is an Indian tribe?

Any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians.
To what cases does ICWA apply?

In child custody proceedings:
1. Foster care placements
2. Termination of parental rights
3. Pre-adoptive placement
4. Adoptive placement

To what cases does ICWA apply?

Divorce proceedings or custody disputes in which neither parent will have custody of the child. (Family law)

To what Cases does ICWA not apply?

1. Delinquency proceedings unless the child is being temporarily or permanently removed from the family home because of protective issues in the home.
2. Divorce proceedings if custody is granted to one of the parents.
Slide 15

Who determines who is an Indian Child?

Only an Indian tribe is able to determine whether a child is a member of a tribe or is eligible for membership in the tribe.

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Slide 16

When does ICWA apply?

The case is treated as an ICWA case immediately if there is reason to know that the child is or may be Indian. At the same time, the tribe should be provided notice and the opportunity to confirm if the child is an “Indian child.”

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When does ICWA not apply?

When the court determines it does not apply after:
- Full and complete inquiry
- Proper and adequate notice
- Neither a tribe nor the BIA have confirmed the child is an Indian child within 60 days

If the tribe or BIA subsequently confirms that an Indian child is involved, the court must reverse its finding.

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Tribal Participation

- The tribe may assert exclusive jurisdiction, in which case transfer is mandatory.
- If it does not have exclusive jurisdiction, it may still petition for transfer of jurisdiction.
- The tribe may decide to intervene.

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Tribal Participation

Whether the tribe petitions to intervene or not and whether the tribe petitions to take jurisdiction or not, the ICWA still applies and its provisions must be followed.

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Other definitions:

“Parent” means:
- a biological parent of an Indian child
- an Indian person who has adopted the child under tribal law or custom or state law
- excludes unwed father “where paternity has not been acknowledged or established”
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Other definitions:

"Indian custodian" means:

Any Indian person who has legal custody of an Indian child by:

• Tribal law or custom
• State law
• Temporary transfer of physical care, custody and control by parent

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What do we hope to get out of today?

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ICWA: Historical Context

“You don’t know where you are going until you know where you came from.”
Indian Removal Act 1830
- Result of growing tensions between Indians and non-Indians
- Tribes were moved to Indian Territory west of the Mississippi
- Affected more than 10,000 Indians including all of the Five Civilized Tribes
- Trail of Tears – over 1000 miles traveled beginning in 1831

Urban Relocation Program 1952
- Promised jobs and housing in a number of cities
- Bare minimum in job assistance and housing
- Indians were moved to cities furthest from their home to discourage return
- BIA refused to give names of other relocated Indians to discourage association

Urban Relocation Program
- No jobs or temporary low-paying jobs
- Difficult transition to urban living
- Large number of Indians returning to reservations; those who remained struggled
- New tribal community and identity emerged.
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Real Indians Soon to Call City Home

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Boarding School Experience

• eLearning
• What did we learn?
• How does this impact social work today?

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California Indians
500 Nations: California Coast
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**Indian Adoption Project**
- Operated during the Termination Era of federal Indian policy, intended to end federal oversight of Indian affairs (resulted in the termination of more than 150 tribes)
- Partnership between the BIA, Children’s Bureau and Child Welfare League of America

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**Indian Adoption Project**
- Continued until 1976 by private adoption agencies, boarding schools, churches
- 395 children adopted through the Project (16 states and 31 adoption agencies)
- Estimated 12,486 children adopted between 1961-1976

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**The Two Apologies**

**BIA Apology**
In 2000 Kevin Gover, a member of the Pawnee Tribe of Oklahoma, and Assistant Secretary of the Interior for Indian Affairs, delivered an apology for the conduct of the Bureau of Indian Affairs and their collusion in helping to break up Indian families.

The apology was video taped and can be found on YouTube at: https://www.youtube.com/watch?v=zu52ig696L4.
Mr. Shay Bilchik, executive director of the Child Welfare League of America, issued an apology at the National Indian Child Welfare Association Conference in Anchorage, Alaska on April 24, 2001. The apology is for the role that CWLA played in the Indian Adoption Project that it entered into with the Bureau of Indian Affairs. The project was developed to remove Indian children, for the most part infants, and place them in adoptive homes with non-Indian parents. The project continued the increasing assault on the Indian family.

Indian Child Welfare Act
History, Purpose and Provisions

American Indian Policy Review Commission
• Established in 1976 to review the entirety of Federal–Indian relations
• 11 individual task forces were created to study issues of significance at the time.
• A section of their final report to Congress outlines what was to become the ICWA.
Commission Findings

- Decisions made about Indian children were biased when made by non-Indian authorities.
- 25% to 35% of all Indian children were removed and raised at some time in non-Indian homes and institutions.
- That Indian children are vital to the continued existence of Indian Tribes and therefore must be protected.

Commission Findings

- An alarmingly high percentage of Indian families are broken up by removal, often unwarranted, of children by public and private agencies.
- An alarmingly high percentage of such children are then placed in non-Indian homes and institutions.
- States failed to recognize the tribal, social, and cultural standards prevailing in Indian communities and families.

The Indian Child Welfare Act was passed to remedy these issues!
A Curious Paradox

Many early non-Indian commentators praised familial and tribal devotion to their children, but now, after generations of conflict and conflict with western “civilization,” so many Indian families are perceived as incapable of child rearing.

ICWA: Purpose

In adopting ICWA, Congress declared that the policy of US is to:
• protect the best interests of Indian children
• promote the stability and security of Indian tribes and families

Purpose accomplished by:
• Establishing minimum federal standards for the removal of Indian children from their families and their placement in foster or adoptive homes that the unique values of Indian culture
• Providing for assistance to Indian tribes in the operation of child and family service programs.

Spirit of ICWA

Research has determined that culturally centered practice will result in a reduction of the number of times an individual enters public systems and ultimately reduces the burden of cost.
Spirit of ICWA

Treating the case as an ICWA case

• where the tribe is not a federally-recognized Indian tribe

• When the family is a Native American family but not a member of a tribe

• When the child is a descendant of a federally recognized tribe but is not eligible for enrollment

Historic Trauma

• Cultural Trauma is an attack on the fabric of a society, affecting the essence of the community and its members.

• Historical Trauma is the cumulative exposure of traumatic events that affect an individual and continues to affect subsequent generations.

• Intergenerational Trauma occurs when trauma is not resolved, subsequently internalized, and passed from one generation to the next.

Historic Trauma: Examples

Unresolved grief and loss that results from historic trauma manifests itself in:

- being quick to anger
- low self-esteem/shame of identity
- history of depression
- suicidal ideation
- substance abuse
- violence
**Slide 45**

**Historic Trauma: Examples**

- Lack of parenting skills and shame about loss of culture (knowing what to do when children misbehave in a cultural way, knowing language, knowing about ceremonies)
- Emotional remoteness and “going through the motions” of the process
- Apathy and resistance toward following through with case plans or contacting other government agencies

**Slide 46**

**Contributions**

What have American Indian/Alaska Natives contributed to contemporary society?

*Native American Women Warriors Color Guard*

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**Tribal Sovereignty: Political Entities**

- Indian tribes have been recognized as distinct political sovereigns since before the United States was formed.
- The relationship between Indian tribes and the United States does not derive from race or ethnicity, but rather from their status as governments.
- Tribes’ status as political entities is affirmed in the law.
Tribal Sovereignty: Political Entities

- Indian tribes are culturally distinct entities with unique cultural, language and history.
- Indian tribes retain inherent powers of self-government—like states and the federal government—which includes the authority to make laws, impose taxes and determine membership.

Tribal Sovereignty: Trust Relationship

- Relationship redefined by U.S. Supreme Court Chief Justice John Marshall in Cherokee Nation vs. Georgia: tribes are "domestic dependent nations" "…in a state of pupilage; their relation to the United States resembles that of a ward [US] to his guardian [tribe]."
- Relationship between the United States federal government and Indian nations
- Legally enforceable fiduciary obligation of the United States towards Indian tribes
- Extends only to federally-recognized Indian tribes

Tribal Sovereignty: Child Welfare

- Through ICWA Congress declared that part of its trust responsibility to tribes included protecting the best interests of Indian children, and promoting the stability and security of Indian tribes and families.
- Sovereignty and Child Welfare:
  - Offering prevention and rehabilitation services to Indian families
  - Designating ICWA representatives to receive notice of dependency proceedings involving Indian children
  - Defining expert witness criteria
  - Tribal Customary Adoption
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ICWA Requirements and Social Work Practice

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ICWA’s Five Provisions

- Inquiry & Notice
- Active Efforts
- Placement
- Concurrent Planning
- Qualified Expert Witness

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Inquiry

- 3 Native children are in care for every 1 Non-Hispanic white child
- 2014: 90k open referrals in CA, inquiry was made in only half of the cases
- Lack of inquiry may result in families being denied services they need in order to remain intact
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Inquiry

• Many children who are eligible for the protection of the ICWA do not **appear** to be Indian.
• Many are of mixed racial heritage.
• In the Southwest, many Indian families have Spanish last names.

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Inquiry

Most people who are Indian know where they are from, who their relatives are and can provide detailed information. Exceptions are individuals who have lived in urban areas for a generation or more or who were adopted by non-Indian parents.

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Inquiry

• The Court, social services, probation and the party seeking foster care placement, guardianship, tribal customary adoption or adoption (the petitioner) have an ongoing duty to inquire about whether a child is an Indian child.
• The duty to inquire applies to all juvenile dependency proceedings and any delinquency proceeding where the child is at risk of entering foster care or is in foster care.
Inquiry

If the Court, a social worker, probation officer or petitioner has reason to know that an Indian child is involved, further inquiry is required and must be done as soon as practicable.

Reason to know when:
- A person having an interest in the child provides information suggesting the child is a member or eligible for membership in a tribe and/or one or more of the child’s biological parents, grandparents or great-grandparents was or is a member of a tribe.
- The residence or domicile of the child, parents or Indian custodian is in a predominantly Indian community.
- The child or family has received tribal services or benefits or federal services available to Indians.

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Seg 6A/WB 28-30

Best Practice
Presume the child is an Indian child unless and until information is discovered that indicates otherwise.

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Inquiry: Who to ask
- Parents, Indian custodian, extended family members
- Child (if the child is old enough)
- Tribes
- Any other person who reasonably could be expected to have information regarding the child’s membership or eligibility.
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Inquiry: What to ask

• Names, aliases, former names, maiden names of biological parents, grandparents, great-grandparents and Indian custodians

• current and former addresses

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Inquiry: What to ask

• Birthdates, places of birth and death

• Tribal enrollment numbers

• Any other identifying information, if known

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Inquiry: Ongoing duty

• At initial intake, ask if the child may be of American Indian heritage.

• Ask again if the child is going to be placed in foster care.

• If the answer is “yes,” immediately treat the case as an ICWA case and follow the provisions of the Act.
Inquiry: Ongoing duty

- If the child, mother, father, grandparent or Indian custodian indicates the child may be Indian, take the information needed to develop a family tree.
- Establish from what tribe the child may be, and what reservation.
- Get enrollment and membership numbers, tribal telephone numbers or addresses.

Best Practice: Inquiry

If a child is moving into permanency on the adoption track and the records do not show if the child is Indian or may be Indian, ask the question before proceeding with the adoption.

Inquiry
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**Inquiry Resources**

- “Reasons Why People Don’t Claim Indian Heritage” found in Participant’s Workbook and at [http://www.courts.ca.gov/8103.htm](http://www.courts.ca.gov/8103.htm)
- Indian Child Welfare Act Inquiry Interview sheet
- Family Tree or Pedigree Chart

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**Inquiry At A Glance**

- Disproportionality cannot be reduced if we do not identify each Indian child in our care.
- It’s better to state rather than ask “If you are American Indian/Alaska Native there may additional services available to you.”
- Continue to ask throughout the life of the case.

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Seg 6A

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**Skill Building Activity: Inquiry**

- Maintaining the culture: Two Indian men making rope.

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Seg 6A
Notice: Its Importance

- Allows a tribe to determine whether a child is an Indian child
- Advises the tribe of the pending proceedings and ensures the tribe an opportunity to assume jurisdiction or intervene in the proceedings
- Without notice to the tribe, the intent and underlying policy of ICWA are undermined.

Notice

If the Court, a social worker, probation officer or petitioner knows or has reason to know that an Indian child is involved, notice is required.

Reason to know exists when:
- A person having an interest in the child provides information suggesting the child is a member or eligible for membership in a tribe and/or one or more of the child’s biological parents, grandparents or great-grandparents was or is a member of a tribe
- The residence or domicile of the child, parents or Indian custodian is in a predominantly Indian community
- When the child or family has received tribal services or benefits or federal services available to Indians

Notice: Who Gives Notice?

- Social worker
- Probation worker
- Petitioner
- Court clerk under specific circumstances
Notice: Who Receives Notice?

- Parent, guardian, Indian custodian
- To Tribe:
  - The tribal chairperson unless there is another designated agent for service
  - To all tribes of which the child may be a member or eligible for membership
  - Federal register publishes a list of all tribally designated agents for service of notice
  - COSS has an “official” alphabetical list by cultural affiliation
  - The Bureau of Indian Affairs (BIA) Washington, DC
  - The Secretary of the Interior Washington, DC

Notice to Tribes

- Notice must be provided to all tribes in which the child may be a member or eligible for membership until the court makes a determination as to which is the child’s tribe
- Subsequent notice may be abbreviated if a tribe confirms the child is a member or is eligible for membership or if a tribe has intervened.

Notice: What is included?

- Hearing information (date, time, type, identifying information of child, name of tribe)
- Copy of the petition
- Statement of rights of the party receiving the notice including: the right to intervene, to transfer case to tribal court, to counsel and potential legal consequences on custodial/parental rights
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**Notice: What is included?**

- Statement that information in the notice and other court documents is confidential and anyone receiving notice shall maintain confidentiality.
- Family history information (names, addresses, birthdates and birthplaces, tribal enrollment information and any other identifying information if known).
- Child’s birth certificate.

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**Notice: What is included?**

- Location and contact information for the court.
- Information about all parties notified (except where disclosure creates risk of harm as a result of domestic violence, child abuse, sexual abuse, stalking).

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**Notice: When**

- Notice must be provide whenever it is known or there is a reason to know that an Indian child is involved.
- Notice must be received at least 10 days prior to the hearing except if the hearing is a detention hearing, and then notice must be given as soon as possible after filing the petition.
- If the Court, social worker or probation office subsequently receives information that is required in the notice that was not previously provided, notice must be sent again.
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Notice: Where

- Federal Register list of tribally designated agents for service of ICWA notice
- CDSS list
  - Alphabetized by cultural affiliation (Diegueño, Cahuilla, etc.)
  - Not official

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Notice: Where

- U.S. Secretary of the Interior
  - Department of the Interior
  - 1849 C Street, N.W.
  - Washington, DC 20240
- Bureau of Indian Affairs
  - Sacramento Area Director
  - Bureau of Indian Affairs
  - Federal Office Building
  - 2800 Cottage Way
  - Sacramento, California 95825

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Notice: How

- Registered or certified mail, return receipt requested
- Must file proof of notice with court in advance of the hearing, including:
  - Copy of notices sent
  - All return receipts
  - All responses received
  - Exception for detention hearing – within 10 days of filing of petition
Sanction
Knowingly and willfully falsifying or concealing a material fact concerning whether the child is an Indian child or who counsels a party to do so – is subject to court sanctions

Noticing At A Glance
• Must notice all tribes
• Check your county’s ICWA protocol (if any)

Active Efforts
ICWA requires any party seeking to effect foster care or the termination of parental rights to satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts were unsuccessful.
Active vs. Reasonable Efforts

The “active efforts” standard requires more effort than “reasonable efforts.” An Alaska court cited an ICWA commentator who distinguished between active and passive efforts: “passive efforts entail merely drawing up a reunification plan and requiring the ‘client’ to use his or her own resources to bring it to fruition.”

Active vs Reasonable Efforts

“Active efforts” require engaging with the family while “reasonable efforts” simply offers referrals to the family and leaves it to them to seek assistance.

Active Efforts

• What constitutes active efforts is assessed on a case-by-case basis.
• This requires the provision (or offer) of culturally appropriate remedial services and rehabilitative programs designed to prevent the break-up of the family.
Active Efforts
Active efforts requires utilizing the available resources of the child’s tribe, extended family, tribal and other Indian social services agencies, and individual Indian caregiver service providers.

Skill Building Activity: Active Efforts

Active Efforts At A Glance
• Active Efforts begin immediately if you have reason to believe this is an Indian child.
• Active Efforts is meant to help families believe in the process rather than become dependent.
Placement

Who is extended family?

“Extended family member” shall be defined by the law or custom of the Indian child's tribe or, in the absence of such a law or custom, shall be a person who has reached the age of 18 and who is the Indian child's grandparent, aunt, uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin or stepparent.

Placement Preferences:
Foster Care/Pre-Adoptive

Child must be placed in
1. A member of the Indian child’s extended family;
2. A foster home 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 Indian child’s needs.”
Placement Preferences: Foster Care/Pre-Adoptive

1. Extended family.
2. Foster care licensed by Tribe.
3. Indian foster home licensed by state.
4. Institution approved by Tribe.

Placement Preference:

Foster Care/Pre-Adoptive

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Placement preference:

Adoptive

1. A member of the child’s extended family;
2. Other members of the Indian child’s tribe; or
3. Other Indian families.

Note: There is no fourth item in the order of preference that allows for adoption of Indian children by non-Indians.

Placement Preferences For Adoptive (Permanent) Placements

1. Extended family.
2. Tribal member.
3. Other Indian family.

Note: There is no fourth item in the order of preference that allows for adoption of Indian children by non-Indians.
Placement Preferences: Tribe

If the child’s tribe establishes by resolution a different order of placement preference, the agency or court effecting placement must follow it so long as the placement is the least restrictive setting appropriate to the needs of the child.

Placement Preferences

The prevailing social and cultural standards of the Indian community where the parent or extended family lives or with which the parent or extended family maintains social and cultural times applies in meeting ICWA preference requirements.

Placement Preferences

Placement preferences also apply whenever an Indian child is being removed from a placement for the purpose of further foster care or because they are being placed in a preadoptive or adoptive placement.

Placement preferences do not apply when the Indian child is being removed from a placement to be returned to the parent or Indian custodian from whose custody the child was originally removed.
Emergency Removal

ICWA does not prevent the emergency removal of an Indian child who is a resident of or domiciled on a reservation, but temporarily located off the reservation or the placement of that child in foster care in order to prevent physical damage or harm to the child.

However, the authority involved in the emergency removal or placement must ensure the removal or Placement terminates immediately when it no longer is necessary to prevent imminent physical damage or harm to the child. The intervening authority must expeditiously initiate a child custody proceeding, transfer the child to the tribe’s jurisdiction or return the child to the parent of Indian custodian as may be appropriate.

Placement At A Glance

• Place with family/extended family
• Work with Tribal ICWA worker to identify placement options
Concurrent Planning
A practice technique used by social workers that takes place when the worker and the family simultaneously plan for reunification and alternate permanent placement if reunification is not possible.

Concurrent Planning Considerations
• How should the agency and the court approach concurrent planning in an ICWA case?
• How involved should the child’s tribe be in concurrent planning?
• What unique considerations are there in permanency planning for Indian children?
• What different permanency options should be considered for Indian children?

Concurrent Planning Considerations
• Is the Indian child with an “extended family member” who is unwilling or unable to adopt due to cultural beliefs or other circumstances?
• Would adoption substantially interfere with the child’s connection to his or her tribal community or membership rights?
Concurrent Planning Considerations

- Has the child’s tribe identified guardianship, long-term guardianship with a fit and willing relative, tribal customary adoption or another planned permanent living arrangement for the child?
- Is there another compelling reason for determining that TPR would not be in the Indian child’s best interest?

Tribal Customary Adoption

- Tribal customary adoption (TCA) is adoption by and through tribal custom, traditions, or law of an Indian child’s tribe.
- Termination of parental rights is not required under TCA.
- The adoption assessment report must address the option of TCA and the social worker must consult with the tribe to determine if TCA is recommended.

- The tribe or its designee must complete a TCA home study before approval of TCA placement.
- If tribe selects TCA as the permanent plan, court may grant 120-day continuance for completion of TCA process.
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Tribal Customary Adoption

Finalization of TCA requires:

- Tribe's completion of home study and TCA order
- Filing of adoption petition
- Filing of final report on TCA by agency
- Full faith and credit afforded to TCA order by juvenile court

Consent of parent or Indian custodian not required.

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Concurrent Planning At A Glance

- Is part of standard child welfare practice.
- Remember to inform family and tribe of tribal customary adoption as an option early in the case.
- Tribal customary adoption is done by the tribe not the department.

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Qualified Expert Witness

- A foster care placement of an Indian child, may not be ordered until the party seeking placement establishes that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.
- Evidence supporting this conclusion must be supported by the testimony of one or more qualified expert witnesses.
Qualified Expert Witness

Termination of parental rights may not be ordered until a determination is made that the continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child. Evidence supporting this conclusion must include the testimony of one of more qualified expert witnesses.

Qualified Expert Witness

A qualified expert is a person who can address the issue of whether continued custody by a parent or Indian custodian is likely to result in serious emotional or physical damage (detriment) to the child.

Qualified Expert Witness: Purpose

- The purpose of expert witness testimony is to provide the court with information about the social and cultural aspects of Indian life in order to diminish the risk of any cultural bias.
- Expert witness testimony addresses these issues:
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Qualified Expert Witness:
Purpose

• Was the child in imminent danger at the time of removal when that removal took place without remedial services to prevent it?
• Are decisions being unduly influenced by inappropriate cultural biases?

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Qualified Expert Witness:
Purpose

Qualified expert witness testimony is not required to support the active efforts finding, but the expert can speak to this issue and help identify culturally appropriate remedial services and rehabilitative programs designed to prevent the break-up of the family.

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Who is a Qualified Expert Witness?

• A social worker, sociologist, physician, psychologist, traditional tribal therapist and healer, tribal spiritual leaders, tribal historian, or tribal elder.
• Cannot be an employee of the person/agency recommending foster care placement or termination of parental rights.
• County social workers are disqualified from being expert witnesses in the same county where the workers are employed.
Those likely to be a qualified expert witness are:

- A member of the child’s tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices;

Any person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices with the child’s tribe;

A professional person with substantial education and experiences in the area of his or her specialty.
When to contact Qualified Expert Witness?

- It is helpful if the petitioner identifies the expert witness, or witnesses, at the outset of the case in consultation with the tribe.
- The court or agency may request help of the tribe or BIA in locating witness.

Link to list of expert witnesses: [Statewide link](http://www.courtinfo.ca.gov/programs/cfcc/programs/description/ICWAExpertWitness.htm)

Qualified Expert Witness At A Glance

- Document all your efforts related to inquiry, notice, active efforts, and placement.
- Work with the child’s tribe to identify a qualified expert witness

ICWA’s Five Provisions

- Inquiry & Notice
- Active Efforts
- Placement
- Concurrent Planning
- Qualified Expert Witness
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**ICWA Challenges**

What do you think the biggest challenges are with working on an ICWA case?

What are the biggest challenges of your ICWA case?

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**CA Court of Appeals ICWA cases to 2010**

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**ICWA: Current Issues**

- Lawsuits
- Spirit of ICWA Document
- Disproportionality
- Tribally Approved Homes
- New Statewide Practice Model
- After 18 Care (Youth who have aged out of system)
- Department of Justice ICWA Compliance Initiative

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Outcomes from a Tribal Perspective
• What has ICWA accomplished?
• In what ways was ICWA not followed?
• Examples of how ICWA could have and should have been followed

What stands out from today?

Best Practice: Inquiry
Assume that the child is an Indian child unless and until there is information indicating otherwise.
Best Practice: Inquiry

If a child must be enrolled in order to be considered a member, the social worker should assist the family and child in completing required paperwork and engaging in the enrollment process.

Best Practice: Spirit of ICWA

Follow the Spirit of ICWA: Ensure access to culturally appropriate services and facilitate ties between the child, extended family and Tribe, regardless of whether or not the Tribe is federally recognized and if Native American children are descended from federally recognized tribes but are not eligible for membership.

Best Practice: BIA Guidelines

Adopt the BIA ICWA guidelines as the foundation for best practices in serving Indian child and families.
Best Practice: Engage

As soon as possible, engage with tribal social workers, ICWA agents and advocates and develop relationships that support appropriate decision-making to ensure ICWA compliance.

American Indian Enhancement Implementation Toolkit

Designed to assist your county to advance child welfare practice and achieve compliance with the letter and spirit of the Indian Child Welfare Act (ICWA).

http://calswec.berkeley.edu/toolkit/implementation-toolkit-american-indian-enhancement-project/implementation-toolkit-american-indian-enhancement-project

Post Test, Evaluation and Closing
Thank you for working to ensure that outcomes for Native American foster youth improve!

Tribal STAR
Academy for Professional Excellence
SDSU School of Social Work
http://theacademy.sdsu.edu/TribalSTAR
619-594-1546

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Materials Checklist

- Registration material
- Food (continental breakfast/lunch)
- ICWA Classroom Trainer Guide
- ICWA Classroom Participant’s Workbook
- ICWA Classroom PowerPoint
- DVDs
- Supplemental PowerPoint (Contributions)
- Appropriate Native American posters and quotes or proverbs posted on the training room walls
- Posters depicting children and families, both historical and contemporary, are appropriate.
- Native American artifacts and colorful tablecloths can also be utilized for the registration and food tables to welcome participants.
Appendices

APPENDIX A: THE INDIAN CHILD WELFARE ACT (ICWA)
UNITED STATES CODE TITLE 25 - INDIANS CHAPTER 21 - INDIAN CHILD WELFARE

Contents CHAPTER 21 - INDIAN CHILD WELFARE

§ 1901. Congressional findings.
§ 1902. Congressional declaration of policy.
§ 1903. Definitions. SUBCHAPTER I - CHILD CUSTODY PROCEEDINGS
§ 1911. Indian tribe jurisdiction over Indian child custody proceedings.
§ 1912. Pending court proceedings.
§ 1913. Parental rights; voluntary termination.
§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations.
§ 1915. Placement of Indian children.
§ 1916. Return of custody.
§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court.
§ 1918. Reassumption of jurisdiction over child custody proceedings.
§ 1919. Agreements between States and Indian tribes.
§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child.
§ 1922. Emergency removal or placement of child; termination; appropriate action.
§ 1923. Effective date.

SUBCHAPTER II - INDIAN CHILD AND FAMILY PROGRAMS
§ 1931. Grants for on or near reservation programs and child welfare codes.
§ 1932. Grants for off-reservation programs for additional services.
§ 1933. Funds for on and off reservation programs.
§ 1934. "Indian" defined for certain purposes.

SUBCHAPTER III - RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES
§ 1951. Information availability to and disclosure by Secretary.

SUBCHAPTER IV - MISCELLANEOUS PROVISIONS
§ 1961. Locally convenient day schools.

§ 1901. Congressional findings Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds - (1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes

“Let the Spirit Lead...” ICWA: In the Best Interest of the Indian Child | Trainer's Guide
October 2015
(FOOTNOTE 1) " and, through this and other constitutional authority, Congress has plenary power over Indian affairs; (FOOTNOTE 1) So in original. Probably should be capitalized. (2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources; (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe; (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

§ 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation 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, and by providing for assistance to Indian tribes in the operation of child and family service programs.

§ 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term - (1) "child custody proceeding" shall mean and include - (i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated; (ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship; (iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and (iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 1606 of title 43;
(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause
to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

§ 1912. Pending court proceedings
(a) Notice; time for commencement of proceedings; additional time for preparation In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services
and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that 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.

(f) Parental rights termination orders; evidence; determination of damage to child No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that 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.

§ 1913. Parental rights; voluntary termination
(a) Consent; record; certification matters; invalid consents Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

§ 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations
Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

§ 1915. Placement of Indian children
(a) Adoptive placements; preferences In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with - (i) a member of the Indian child's extended family; (ii) a foster home licensed, approved, or specified by the Indian child's tribe; (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: Provided, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable The standards to be applied in meeting the preference requirements of this section shall 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.

(e) Record of placement; availability A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

§ 1916. Return of custody (a) Petition; best interests of child Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of
section 1912 of this title, that such return of custody is not in the best interests of the child. (b) Removal from foster care home; placement procedure Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

§ 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

§ 1918. Reassumption of jurisdiction over child custody proceedings (a) Petition; suitable plan; approval by Secretary Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession (1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things: (i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe; (ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe; (iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and (iv) the feasibility of the plan in cases of multiracial occupation of a single reservation geographic area. (2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected. (c) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval. (d) Pending actions or proceedings unaffected Assumption of jurisdiction under this section shall not affect any action or proceeding over
which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

§ 1919. Agreements between States and Indian tribes

(a) Subject coverage States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

§ 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

§ 1922. Emergency removal or placement of child; termination; appropriate action Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

§ 1923. Effective date None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall
apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

§ 1931. Grants for on or near reservation programs and child welfare codes (a) Statement of purpose; scope of programs The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to - (1) a system for licensing or otherwise regulating Indian foster and adoptive homes; (2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children; (3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; (4) home improvement programs; (5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters; (6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs; (7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and (8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings. (b) Non-Federal matching funds for related Social Security or other Federal financial assistance programs; assistance for such programs unaffected; State licensing or approval for qualification for assistance under federally assisted program Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act (42 U.S.C. 620 et seq., 1397 et seq.) or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this chapter. The provision or possibility of assistance under this chapter shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

§ 1932. Grants for off-reservation programs for additional services The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to - (1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs; (2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children; (3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and (4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.
§ 1933. Funds for on and off reservation programs (a) Appropriated funds for similar programs of Department of Health and Human Services; appropriation in advance for payments In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health and Human Services, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health and Human Services: Provided, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts. (b) Appropriation authorization under section 13 of this title Funds for the purposes of this chapter may be appropriated pursuant to the provisions of section 13 of this title. § 1934. "Indian" defined for certain purposes For the purposes of sections 1932 and 1933 of this title, the term "Indian" shall include persons defined in section 1603(c) of this title.

§ 1951. Information availability to and disclosure by Secretary (a) Copy of final decree or order; other information; anonymity affidavit; exemption from Freedom of Information Act Any State court entering a final decree or order in any Indian child adoptive placement after November 8, 1978, shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show - (1) the name and tribal affiliation of the child; (2) the names and addresses of the biological parents; (3) the names and addresses of the adoptive parents; and (4) the identity of any agency having files or information relating to such adoptive placement. Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended. (b) Disclosure of information for enrollment of Indian child in tribe or for determination of member rights or benefits; certification of entitlement to enrollment Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

§ 1952. Rules and regulations Within one hundred and eighty days after November 8, 1978, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter. § 1961. Locally convenient day schools (a) Sense of Congress It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families. (b) Report to Congress; contents, etc. The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health and Human Services, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.
within two years from November 8, 1978. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades. § 1962. Copies to the States Within sixty days after November 8, 1978, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this chapter, together with committee reports and an explanation of the provisions of this chapter.

§ 1963. Severability
If any provision of this chapter or the applicability thereof is held invalid, the remaining provisions of this chapter shall not be affected thereby.

APPENDIX B: GUIDELINES FOR STATE COURTS AND AGENCIES IN INDIAN CHILD CUSTODY PROCEEDINGS (80 FR 10146, effective February 25, 2015)

SUPPLEMENTARY INFORMATION:

I. Background These updated BIA guidelines provide standard procedures and best practices to be used in Indian child welfare proceedings in State courts. The updated guidelines are issued in response to comments received during several listening sessions, written comments submitted throughout 2014, and recommendations of the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence.

Congress enacted ICWA in 1978 to address the Federal, State, and private agency policies and practices that resulted in the “wholesale separation of Indian children from their families.” H. Rep. 95-1386 (July 24, 1978), at 9. Congress found “that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions . . . .” 25 U.S.C. 1901(4). Congress determined that cultural ignorance and biases within the child welfare system were significant causes of this problem and that state administrative and judicial bodies “have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.” 25 U.S.C. 1901(5); H. Rep. 95-1386, at 10. Congress enacted ICWA to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes or institutions which will reflect the unique values of Indian culture.” H. Rep. 95-1386, at 8. ICWA thus articulates a strong “federal policy that, where possible, an Indian child should remain in the Indian community. “Mississippi Band of Choctaw Indians v. Holyfield,490 U.S. 30 (1989) (citing H. Rep. 95-1386 at 24).

Following ICWA's enactment, in July 1979, the Department of the Interior (Department) issued regulations addressing notice procedures for involuntary child custody proceedings involving Indian children, as well as governing the provision of funding for and administration of Indian child and family service programs as authorized by ICWA. See 25 CFR part 23. Those regulations did not address the specific requirements and standards that
ICWA imposes upon State court child custody proceedings, beyond the requirements for contents of the notice. Also, in 1979, the BIA published guidelines for State courts to use in interpreting many of ICWA’s requirements in Indian child custody proceedings. 44 FR 67584 (Nov. 26, 1979). Although there have been significant developments in ICWA jurisprudence, the guidelines have not been updated since they were originally published in 1979. Much has changed in the 35 years since the original guidelines were published, but many of the problems that led to the enactment of ICWA persist.

In 2014, the Department invited comments to determine whether to update its guidelines and what changes should be made. The Department held several listening sessions, including sessions with representatives of federally recognized Indian tribes, State court representatives (e.g., the National Council of Juvenile and Family Court Judges and the National Center for State Courts’ Conference of Chief Justices Tribal Relations Committee), the National Indian Child Welfare Association, and the National Congress of American Indians. The Department received comments from those at the listening sessions and also received written comments, including comments from individuals and additional organizations, such as the Christian Alliance for Indian Child Welfare and the American Academy of Adoption Attorneys. An overwhelming proportion of the commenters requested that the Department update its ICWA guidelines and many had suggestions for revisions that have been included. The Department reviewed and considered each comment in developing these revised Guidelines.

II. Statutory Authority

The Department is issuing these updated guidelines under ICWA, 25 U.S.C. 1901 et seq., and its authority over the management of all Indian affairs under 25 U.S.C. 2.

III. Summary of Updates

The 1979 guidelines included “commentary” for each section, which was intended to explain the requirements of each section. The updated guidelines are clearer, making the commentary unnecessary. Recognizing the important role that child welfare agencies play in ICWA compliance, these updated guidelines broaden the audience of the guidelines to include both State courts and any agency or other party seeking placement of an Indian child. The guidelines identify procedures to address circumstances in which a parent desires anonymity in a voluntary proceeding. Those procedures clarify that a parent's desire for anonymity does not override the responsibility to comply with ICWA. The guidelines also establish that agencies and courts should document their efforts to comply with ICWA. The following paragraphs include section-by-section highlights of the substantive updates that these guidelines make to the 1979 version.

Section A. General Provisions (formerly, entitled “Policy”)

The updated guidelines add several provisions to section A, to provide better context for the guidelines and clear direction on implementing the guidelines. For example, this section includes definitions of key terms used throughout the guidelines, such as “active efforts” and “child custody proceeding.” The phrase “active efforts” has been inconsistently
interpreted. The guidelines’ definition is intended to provide clarity—particularly in establishing that “active efforts” require a level of effort beyond “reasonable efforts.”

Section A also includes an applicability section, which incorporates many of the provisions of the 1979 guidelines’ section B.3. In addition, section A:

- Clarifies that agencies and State courts must ask, in every child custody proceeding, whether ICWA applies;
- Clarifies that courts should follow ICWA procedures even when the Indian child is not removed from the home, in order to allow tribes to intervene as early as possible to assist in preventing a breakup of the family; and
- Provides that, where agencies and State courts have reason to know that a child is an Indian child, they must treat that child as an Indian child unless and until it is determined that the child is not an Indian child.

These clarifications are necessary to ensure that the threshold question for determining whether ICWA applies (is the child an Indian child?) is asked, and asked as soon as possible. If such inquiry is not timely made, a court proceeding may move forward without appropriate individuals aware that ICWA applies and that certain procedures must be followed. Tragic consequences may result.

The updated guidelines also add a section regarding how to contact a tribe, in case the agency or State court is unfamiliar with whom to contact.

Section A is intended to make clear that there is no existing Indian family (EIF) exception to application of ICWA. The EIF doctrine is a judicially-created exception to the application of ICWA. Since first recognition of the EIF in 1982, the majority of State appellate courts that have considered the EIF have rejected it as contrary to the plain language of ICWA. Some State legislatures have also explicitly rejected the EIF within their State ICWA statutes. The Department agrees with the States that have concluded that there is no existing Indian family exception to application of ICWA.

Section A also clarifies that ICWA and the guidelines apply in certain voluntary placements.

**Section B. Pretrial Requirements**

The updated guidelines, and section B in particular, promote the early identification of ICWA applicability. Such identifications will promote proper implementation of ICWA at an early stage, to prevent—as much as possible—delayed discoveries that ICWA applies. Often, those circumstances resulting from delayed discoveries have caused heartbreaking separations and have sometimes led to noncompliance with ICWA’s requirements. By requiring agencies and courts to consider, as early as possible, whether ICWA applies, the updated guidelines will ensure that proper notice is given to parents/Indian custodians and tribes, that tribes have the opportunity to intervene or take jurisdiction over proceedings, as appropriate, and that ICWA’s placement preferences are respected.
With regard to early discovery, section B requires agencies and courts to consider whether the child is an Indian child, and sets out the steps for verifying the tribe(s) and providing notice to the parents/Indian custodians and tribe(s). Section B also adds guidance regarding the evidence a court may require an agency to provide of the agency's investigations into whether the child is an Indian child.

With regard to application of ICWA, the updated section B clarifies when the Act's requirement to conduct “active efforts” begins. ICWA requires “active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family.” See 25 U.S.C. 1912(d). The updated section B clarifies that active efforts must begin from the moment the possibility arises that the Indian child may be removed. This updated section also clarifies that active efforts should be conducted while verifying whether the child is an Indian child; this clarification ensures compliance with ICWA in cases in which the status of whether the child is an Indian child is not verified until later in the proceedings.

Section B adds a new paragraph clarifying that the tribe alone retains the responsibility to determine tribal membership. This section makes clear that there is no requirement for the child to have a certain degree of contact with the tribe or for a certain blood degree, and notes that a tribe may lack written rolls. The updated guidelines delete the provision allowing BIA, in lieu of the tribe, to verify the child's status. This provision has been deleted because it has become increasingly rare for the BIA to be involved in tribal membership determinations, as tribes determine their own membership. See e.g., Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). (“Congress' authority over Indian matters is extraordinarily broad, and the role of courts in adjusting relations between and among tribes and their members correspondingly restrained.”) BIA may assist in contacting the tribe to ensure a determination, however.

The updated section B also expands upon procedures for determining a child's tribe in the event that more than one tribe is identified as the child's tribe. Specifically, it changes the criteria for determining with which tribe the child has “significant contacts,” adding that the parents' preference for membership will be considered, and deleting factors that are subjective or inapplicable to infants.

With regard to providing notice to Indian tribes and the child's parents/Indian custodians, the updated section B:

- Clarifies that notice is required for each proceeding (not just for the first or last proceeding);
- States that notice must be sent, at a minimum, by registered mail, return receipt requested, and that personal service or other types of service may be in addition to, but not in lieu of, such mail; and
- Clarifies that the tribe has the right to intervene at any time.

This section also clarifies how guidelines apply if the child is transferred interstate.

The updated guidelines expand upon the emergency procedure provisions in light of evidence that some States routinely rely upon emergency removals and placements in a
manner that bypasses implementation of ICWA. See Oglala Sioux Tribe v. Hunnik, Case No. 5:13-cv-05020-JLV, Amicus Brief of the United States, at *5-6 (D.S.D. Aug. 14, 2014) (involving allegations that: (1) Defendants are conducting perfunctory 48-hour hearings that do not adequately gather or evaluate information necessary to determine whether emergency removals or placements should be terminated, and that the orders issued at the end of the 48-hour hearing do not adequately instruct State officials to return the child to the home as soon as the emergency has ended; (2) Defendants are violating the Due Process Clause by preventing parents from testifying, presenting evidence, or cross-examining the State's witnesses at the 48-hour hearing; and (3) parents are not being provided adequate notice or the opportunity to be represented by appointed counsel and that the State courts are issuing orders to remove Indian children from their homes without basing those orders on evidence adduced in the hearing). Because ICWA was intended to help prevent the breakup of Indian families; therefore, emergency removals and emergency placements of Indian children should be severely limited, applying only in circumstances involving imminent physical damage or harm. The updated section B clarifies that the guidelines for emergency removal or placement apply regardless of whether the Indian child is a resident of or domiciled on a reservation. This section also explicitly states the standard for determining whether emergency removal or emergency placement is appropriate—i.e., whether it is necessary to prevent imminent physical damage or harm to the child—and provides examples. The guidelines clearly state that the emergency removal/placement must be as short as possible, and provides guidance on how to ensure it is as short as possible. It also shortens the time period for temporary custody without a hearing or extraordinary circumstances from 90 days to 30 days. This shortened timeframe promotes ICWA's important goal of preventing the breakup of Indian families.

Section C. Procedures for Transfer to Tribal Court

The updated section C deletes the requirement that requests to transfer to tribal court be made “promptly after receiving notice of the proceeding” because there is no such requirement in ICWA. Instead, the updated guidelines clarify that the right to transfer is available at any stage of a proceeding, including during an emergency removal. The updated section C also clarifies that the right to request a transfer occurs with each distinct proceeding. ICWA contains no restriction on the right to request a transfer occurring at the first, last, or any specific child custody proceeding. A tribe may decide that transfer is not appropriate until it reaches the stage where parental termination is being determined.

The updated section C also updates the “good cause” factors for denying transfer to tribal court. The updated criteria are more general; in summary, good cause may be found if either parent objects, the tribal court declines, or the State court otherwise determines that good cause exists. The updated guidelines specifically omit some of the factors that were the basis for finding that “good cause” exists under the 1979 guidelines. One such factor that should no longer be considered is whether the proceeding was at an advanced stage. As mentioned above, there may be valid reasons for waiting to transfer a proceeding until it reaches an advanced stage. Another factor that should no longer be considered is the level of contacts the child has had with the tribe—this factor unnecessarily introduces an outsider's evaluation of the child's relationship with the tribe and cannot sensibly be applied to infants.
The updated guidelines also specify that it is inappropriate to conduct an independent analysis, inconsistent with ICWA's placement preferences, of the “best interest” of an Indian child. The provisions of ICWA create a presumption that ICWA's placement preferences are in the best interests of Indian children; therefore, an independent analysis of “best interest” would undermine Congress's findings. Finally, the updated guidelines provide that the tribal court's prospective placement of an Indian child should not be considered, because it invites speculation regarding the tribal court’s findings and conclusions and, therefore, undermines the independence of tribal court decision making.

Section D. Adjudication of Involuntary Placements, Adoptions, or Terminations or Terminations of Parental Rights

The updated section D establishes that parties have the right to examine records and reports in a timely manner; this ensures that parents/Indian custodians and tribes have the opportunity to examine information necessary to protect their rights under ICWA. This updated section also expands significantly on how to comply with the Act's “active efforts” requirement. Specifically, the updated guidelines:

- Require demonstration that “active efforts” were made, not only “prior to” the commencement of the proceeding, but also “until” the commencement of the proceeding;
- Require documentation of what “active efforts” were made; and

Require a showing that active efforts have been unsuccessful. The updated section D also provides guidance regarding how to identify an appropriate “qualified expert witness.” Commenters indicated that some States rely on witnesses' qualifications as child care specialists, or on other areas of expertise, but do not require any expert knowledge related to the tribal community. The updated guidelines establish a preferential order for witnesses who are experts in the culture and customs of the Indian child's tribe. This will ensure that the expert witness with the most knowledge of the Indian child's tribe is given priority.

Section E. Voluntary Proceedings

ICWA applies to voluntary proceedings that operate to prohibit an Indian child's parent or Indian custodian from regaining custody of the child upon demand; nevertheless, evidence suggests that ICWA is sometimes ignored or intentionally bypassed in voluntary proceedings. The updated section E clarifies that, even in voluntary proceedings, it is necessary to determine whether ICWA applies, and to comply with ICWA's provisions. To ensure that parents and Indian custodians understand the significance of their consent, the updated section E requires the consent document to identify any conditions to the consent and requires the court to explain the consequences of the consent before its execution. It also addresses steps for withdrawal of consent. The updated section E further restates the statutory restriction that a consent given prior to or within 10 days after birth of an Indian child is not valid.

Section F. Dispositions
The updated guidelines provide more information regarding when and how to apply ICWA's placement preferences for foster and adoptive placements. In some cases, agencies fail to conduct any investigation of whether placements that conform to ICWA's placement preferences are available. The updated section F requires that:

- The agency bears the burden of proof if it departs from any of the placement preferences and must demonstrate that it conducted a diligent search to identify placement options that satisfy the placement preferences, including notification to the child's parents or Indian custodians, extended family, tribe, and others; and
- The court determines whether “good cause” to deviate from the placement preferences exists before departing from the placement preferences.

The updated section F also adds provisions to ensure that “good cause” determinations are explained to all parties and documented.

Evidence suggests that “good cause” has been liberally relied upon to deviate from the placement preferences in the past. Commenters noted that, in some cases, a State court departed from the placement preferences because an Indian child has spent significant time in a family's care, despite the fact that the placement was made in violation of ICWA. The guidelines attempt to prevent such circumstances from arising by encouraging early compliance with ICWA (see sections A and B, in particular). The guidelines also specify in section F that “good cause” does not include normal bonding or attachment that may have resulted from a placement that failed to comply with the Act. As in other parts of the guidelines, this section clarifies that an independent consideration of the child's “best interest” is inappropriate for this determination because Congress has already addressed the child's best interest in ICWA. Because ICWA does not allow for consideration of socio-economic status in the placement preferences, this section also now clarifies that the court may not depart from the preferences based on the socio-economic status of one placement relative to another, except in extreme circumstances.

Section G. Post-Trial Rights

ICWA is intended to protect the rights, not only of Indian children, parents and Indian custodians, but also of Indian tribes. The updated guidelines establish that an Indian child, parent or Indian custodian, or tribe may petition to invalidate an action if the Act or guidelines have been violated, regardless of which party's rights were violated. This approach promotes compliance with ICWA and reflects that ICWA is intended to protect the rights of each of these parties.

Adults who had been adopted by non-Indian families and seek to reconnect with their tribes often face significant hurdles in obtaining needed information. The updated guidelines attempt to protect those adults' rights to obtain information about their tribal relationship by specifying that, even in States where adoptions remain closed, the relevant agency should facilitate communication directly with the tribe's enrollment office.

The guidelines also recommend that courts work with tribes to identify tribal designees who can assist adult adoptees to connect with their tribes.
Finally, the updated guidelines clarify that the requirement to maintain records on foster care, preadoptive placement and adoptive placements applies not only in involuntary proceedings, but also in voluntary proceedings.

IV. Guidance

These guidelines supersede and replace the guidelines published at 44 FR 67584 (November 28, 1979).

Guidelines for State Courts and Agencies in Indian Child Custody Proceedings

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Guidelines for State Courts and Agencies in Indian Child Custody Proceedings

A. General Provisions

A.1. What is the purpose of these guidelines?

These guidelines clarify the minimum Federal standards, and best practices, governing implementation of the Indian Child Welfare Act (ICWA) to ensure that ICWA is applied in all States consistent with the Act’s express language, Congress' intent in enacting the statute, and the canon of construction that statutes enacted for the benefit of Indians are to be liberally construed to their benefit. In order to fully implement ICWA, these guidelines should be applied in all proceedings and stages of a proceeding in which the Act is or becomes applicable.

A.2. What terms do I need to know?

Active efforts are intended primarily to maintain and reunite an Indian child with his or her family or tribal community and constitute more than reasonable efforts as required by Title IV-E of the Social Security Act (42 U.S.C. 671(a)(15)). Active efforts include, for example:

(1) Engaging the Indian child, the Indian child's parents, the Indian child's extended family members, and the Indian child's custodian(s);

(2) Taking steps necessary to keep siblings together;

(3) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;

(4) Identifying, notifying, and inviting representatives of the Indian child's tribe to participate;

(5) Conducting or causing to be conducted a diligent search for the Indian child's extended family members for assistance and possible placement;
(6) Taking into account the Indian child's tribe's prevailing social and cultural conditions and way of life, and requesting the assistance of representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards;

(7) Offering and employing all available and culturally appropriate family preservation strategies;

(8) Completing a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;

(9) Notifying and consulting with extended family members of the Indian child to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child;

(10) Making arrangements to provide family interaction in the most natural setting that can ensure the Indian child's safety during any necessary removal;

(11) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or extended family in utilizing and accessing those resources;

(12) Monitoring progress and participation in services;

(13) Providing consideration of alternative ways of addressing the needs of the Indian child's parents and extended family, if services do not exist or if existing services are not available;

(14) Supporting regular visits and trial home visits of the Indian child during any period of removal, consistent with the need to ensure the safety of the child; and

(15) Providing post-reunification services and monitoring.

“Active efforts” are separate and distinct from requirements of the Adoption and Safe Families Act (ASFA), 42 U.S.C. 1305. ASFA’s exceptions to reunification efforts do not apply to ICWA proceedings.

Agency means a private State-licensed agency or public agency and their employees, agents or officials involved in and/or seeking to place a child in a child custody proceeding.

Child custody proceeding means and includes any proceeding or action that involves:

(1) Foster care placement, which is any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, although parental rights have not been terminated;

(2) Termination of parental rights, which is any action resulting in the termination of the parent-child relationship;
(3) **Preadoptive placement**, which is the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; or

(4) **Adoptive placement**, which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

*Continued custody* means physical and/or legal custody that a parent already has or had at any point in the past. The biological mother of a child has had custody of a child.

*Custody* means physical and/or legal custody under any applicable tribal law or tribal custom or State law. A party may demonstrate the existence of custody by looking to tribal law or tribal custom or State law.

*Domicile* means:

(1) For a parent or any person over the age of eighteen, physical presence in a place and intent to remain there;

(2) For an Indian child, the domicile of the Indian child's parents. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's mother. Under the principle for determining the domicile of an Indian child, it is entirely logical that “[o]n occasion, a child's domicile of origin will be in a place where the child has never been.” *Holyfield*, 490 U.S. at 48. *Holyfield* notes that tribal jurisdiction under 25 U.S.C. 1911(a) was not meant to be defeated by the actions of individual members of the tribe, because Congress was concerned not solely about the interests of Indian children and families, but also about the impact of large numbers of Indian children adopted by non-Indians on the tribes themselves. *Id.* at 49.

*Extended family member* is defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, is a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

*Imminent physical damage or harm* means present or impending risk of serious bodily injury or death that will result in severe harm if safety intervention does not occur.

*Indian* means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in 43 CFR part 1606.

*Indian child* means any unmarried person who is under age eighteen and is either: (1) a member of an Indian tribe; or (2) eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

*Indian child's tribe* means: (1) the Indian tribe in which an Indian child is a member or eligible for membership; or (2) in the case of an Indian child who is a member of or eligible
for membership in more than one tribe, the Indian tribe with which the Indian child has 
more significant contacts.


*Indian custodian* means any person who has legal custody of an Indian child under tribal law 
or custom or under State law, whichever is more favorable to the rights of the parent, or to 
whom temporary physical care, custody, and control has been transferred by the parent of 
such child.

*Indian organization* means any group, association, partnership, corporation, or other legal 
entity owned or controlled by Indians or a tribe, or a majority of whose members are 
Indians.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community of 
Indians recognized as eligible for the services provided to Indians by the Secretary because 
of their status as Indians, including any Alaska Native village as defined in [43 U.S.C. 1602(c)].

*Parent* means any biological parent or parents of an Indian child or any Indian person who 
has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does 
not include an unwed father where paternity has not been acknowledged or established. To 
qualify as a parent, an unwed father need only take reasonable steps to establish or 
acknowledge paternity. Such steps may include acknowledging paternity in the action at 
issue or establishing paternity through DNA testing.

*Reservation* means Indian country as defined in [18 U.S.C 1151], including any lands, title to 
which is held by the United States in trust for the benefit of any Indian tribe or individual or 
held by any Indian tribe or individual subject to a restriction by the United States against 
alienation.

*Secretary* means the Secretary of the Interior or the Secretary's authorized representative 
acting under delegated authority.

*Status offenses* mean offenses that would not be considered criminal if committed by an 
adult; they are acts prohibited only because of a person's status as a minor (e.g., truancy, 
incorrigibility).

*Tribal court* means a court with jurisdiction over child custody proceedings, including a 
Court of Indian Offenses, a court established and operated under the code or custom of an 
Indian tribe, or any other administrative body of a tribe vested with authority over child 
custody proceedings.

*Upon demand* means that the parent or Indian custodians can regain custody simply upon 
request, without any contingencies such as repaying the child's expenses.

*Voluntary placement* means a placement that either parent has, of his or her free will, 
chosen for the Indian child, including private adoptions.

“Let the Spirit Lead…” ICWA: In the Best Interest of the Indian Child | Trainer's Guide 
October 2015
A.3. When does ICWA apply?

(a) ICWA applies whenever an Indian child is the subject of a State child custody proceeding as defined by the Act. ICWA also applies to proceedings involving status offenses or juvenile delinquency proceedings if any part of those proceedings results in the need for placement of the child in a foster care, preadoptive or adoptive placement, or termination of parental rights.

(b) There is no exception to application of ICWA based on the so-called “existing Indian family doctrine.” Thus, the following non-exhaustive list of factors should not be considered in determining whether ICWA is applicable: the extent to which the parent or Indian child participates in or observes tribal customs, votes in tribal elections or otherwise participates in tribal community affairs, contributes to tribal or Indian charities, subscribes to tribal newsletters or other periodicals of special interest in Indians, participates in Indian religious, social, cultural, or political events, or maintains social contacts with other members of the tribe; the relationship between the Indian child and his/her Indian parents; the extent of current ties either parent has to the tribe; whether the Indian parent ever had custody of the child; and the level of involvement of the tribe in the State court proceedings.

(c) Agencies and State courts, in every child custody proceeding, must ask whether the child is or could be an Indian child and conduct an investigation into whether the child is an Indian child. Even in those cases in which the child is not removed from the home, such as when an agency opens an investigation or the court orders the family to engage in services to keep the child in the home as part of a diversion, differential, alternative response or other program, agencies and courts should follow the verification and notice provisions of these guidelines. Providing notice allows tribes to intervene as early as possible in a child custody proceeding and provides an opportunity for the tribe to bring resources to bear to assist the family in preventing a breakup of the family.

(d) If there is any reason to believe the child is an Indian child, the agency and State court must treat the child as an Indian child, unless and until it is determined that the child is not a member or is not eligible for membership in an Indian tribe.

(e) ICWA and these guidelines or any associated Federal guidelines do not apply to:

1. Tribal court proceedings;

2. Placements based upon an act by the Indian child which, if committed by an adult, would be deemed a criminal offense; or

3. An award, in a divorce proceeding, of custody of the Indian child to one of the parents.

(f) Voluntary placements that do not operate to prohibit the child's parent or Indian custodian from regaining custody of the child upon demand are not covered by the Act.
(1) Such placements should be made pursuant to a written agreement, and the agreement should state explicitly the right of the parent or Indian custodian to regain custody of the child upon demand.

(2) Nevertheless, it is a best practice to follow the procedures in these guidelines to determine whether a child is an Indian child and to notify the tribe.

(g) Voluntary placements in which a parent consents to a foster care placement or seeks to permanently terminate his or her rights or to place the child in a preadoptive or adoptive placement are covered by the Act.

A.4. How do I contact a tribe under these guidelines?

To contact a tribe to provide notice or obtain information or verification under these Guidelines, you should direct the notice or inquiry as follows:

(1) Many tribes designate an agent for receipt of ICWA notices. The Bureau of Indian Affairs publishes a list of tribes' designated tribal agents for service of ICWA notice in the Federal Register each year and makes the list available on its Web site at www.bia.gov.

(2) For tribes without a designated tribal agent for service of ICWA notice, contact the tribe(s) to be directed to the appropriate individual or office.

(3) If you do not have accurate contact information for the tribe(s) or the tribe(s) contacted fail(s) to respond to written inquiries, you may seek assistance in contacting the Indian tribe(s) from the Bureau of Indian Affairs' Regional Office and/or Central Office in Washington DC (see www.bia.gov).

A.5. How do these guidelines interact with State laws?

(a) These guidelines provide minimum Federal standards and best practices to ensure compliance with ICWA and should be applied in all child custody proceedings in which the Act applies.

(b) In any child custody proceeding where applicable State or other Federal law provides a higher standard of protection to the rights of the parent or Indian custodian than the protection accorded under the Act, ICWA requires that the State court must apply the higher standard.

B. Pretrial Requirements

B.1. When does the requirement for active efforts begin?

(a) The requirement to engage in “active efforts” begins from the moment the possibility arises that an agency case or investigation may result in the need for the Indian child to be placed outside the custody of either parent or Indian custodian in order to prevent removal.
(b) Active efforts to prevent removal of the child must be conducted while investigating whether the child is a member of the tribe, is eligible for membership in the tribe, or whether a biological parent of the child is or is not a member of a tribe.

B.2. What actions must an agency and State court undertake in order to determine whether a child is an Indian child?

(a) Agencies must ask whether there is reason to believe a child that is subject to a child custody proceeding is an Indian child. If there is reason to believe that the child is an Indian child, the agency must obtain verification, in writing, from all tribes in which it is believed that the child is a member or eligible for membership, as to whether the child is an Indian child.

(b) State courts must ask, as a threshold question at the start of any State court child custody proceeding, whether there is reason to believe the child who is the subject of the proceeding is an Indian child by asking each party to the case, including the guardian ad litem and the agency representative, to certify on the record whether they have discovered or know of any information that suggests or indicates the child is an Indian child.

(1) In requiring this certification, the court may require the agency to provide:

(i) Genograms or ancestry charts for both parents, including all names known (maiden, married and former names or aliases); current and former addresses of the child’s parents, maternal and paternal grandparents and great grandparents or Indian custodians; birthdates; places of birth and death; tribal affiliation including all known Indian ancestry for individuals listed on the charts, and/or other identifying information; and/or

(ii) The addresses for the domicile and residence of the child, his or her parents, or the Indian custodian and whether either parent or Indian custodian is domiciled on or a resident of an Indian reservation or in a predominantly Indian community.

(2) If there is reason to believe the child is an Indian child, the court must confirm that the agency used active efforts to work with all tribes of which the child may be a member to verify whether the child is in fact a member or eligible for membership in any tribe, under paragraph (a).

(c) An agency or court has reason to believe that a child involved in a child custody proceeding is an Indian child if:

(1) Any party to the proceeding, Indian tribe, Indian organization or public or private agency informs the agency or court that the child is an Indian child;

(2) Any agency involved in child protection services or family support has discovered information suggesting that the child is an Indian child;

(3) The child who is the subject of the proceeding gives the agency or court reason to believe he or she is an Indian child;
(4) The domicile or residence of the child, parents, or the Indian custodian is known by the agency or court to be, or is shown to be, on an Indian reservation or in a predominantly Indian community; or

(5) An employee of the agency or officer of the court involved in the proceeding has knowledge that the child may be an Indian child.

(d) In seeking verification of the child’s status, in a voluntary placement proceeding where a consenting parent evidences a desire for anonymity, the agency or court must keep relevant documents confidential and under seal. A request for anonymity does not relieve the obligation to obtain verification from the tribe(s) or to provide notice.

B.3. Who makes the determination as to whether a child is a member of a tribe?

(a) Only the Indian tribe(s) of which it is believed a biological parent or the child is a member or eligible for membership may make the determination whether the child is a member of the tribe(s), is eligible for membership in the tribe(s), or whether a biological parent of the child is a member of the tribe(s).

(b) The determination by a tribe of whether a child is a member, is eligible for membership, or whether a biological parent is or is not a member of that tribe, is solely within the jurisdiction and authority of the tribe.

(c) No other entity or person may authoritatively make the determination of whether a child is a member of the tribe or is eligible for membership in the tribe.

(1) There is no requirement that the child maintain a certain degree of contacts with the tribe or for a certain blood quantum or degree of Indian blood.

(2) A tribe need not formally enroll its members for a child to be a member or eligible for membership. In some tribes, formal enrollment is not required for tribal membership. Some tribes do not have written rolls and others have rolls that list only persons that were members as of a certain date. See United States v. Broncheau, 597 F.2d 1260, 1263 (9th Cir. 1979). The only relevant factor is whether the tribe verifies that the child is a member or eligible for membership.

(d) The State court may not substitute its own determination regarding a child’s membership or eligibility for membership in a tribe or tribes.

B.4. What is the procedure for determining an Indian child's tribe when the child is a member or eligible for membership in more than one tribe?

(a) Agencies are required to notify all tribes, of which the child may be a member or eligible for membership, that the child is involved in a child custody proceeding. The notice should specify the other tribe or tribes of which the child may be a member or eligible for membership.
(b) If the Indian child is a member or eligible for membership in only one tribe, that tribe should be designated as the Indian child's tribe.

(c) If an Indian child is a member or eligible for membership in more than one tribe, ICWA requires that the Indian tribe with which the Indian child has the more significant contacts be designated as the Indian child's tribe.

(1) In determining significant contacts, the following may be considered:

(i) Preference of the parents for membership of the child;

(ii) Length of past domicile or residence on or near the reservation of each tribe;

(iii) Tribal membership of custodial parent or Indian custodian; and

(iv) Interest asserted by each tribe in response to the notice that the child is involved in a child custody proceeding;

(d) When an Indian child is already a member of a tribe, but is also eligible for membership in another tribe, deference should be given to the tribe in which the Indian child is a member, unless otherwise agreed to by the tribes. However, if the Indian child is not a member of any tribe, an opportunity should be provided to allow the tribes to determine which of them should be designated as the Indian child's tribe.

(i) If the tribes are able to reach an agreement, the agreed upon tribe should be designated as the Indian child's tribe.

(ii) If the tribes do not agree, the following factors should be considered in designating the Indian child's tribe:

(A) The preference of the parents or extended family members who are likely to become foster care or adoptive placements; and/or

(B) Tribal membership of custodial parent or Indian custodian; and/or

(C) If applicable, length of past domicile or residence on or near the reservation of each tribe; and/or

(D) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes; and/or

(E) Self-identification by the child; and/or

(F) Availability of placements.
(iii) In the event the child is eligible for membership in a tribe but is not yet a member of any tribe, the agency should take the steps necessary to obtain membership for the child in the tribe that is designated as the Indian child's tribe.

(3) Once an Indian tribe is designated as the child’s Indian tribe, all tribes which received notice of the child custody proceeding must be notified in writing of the determination and a copy of that document must be filed with the court and sent to each party to the proceeding and to each person or governmental agency that received notice of the proceeding.

(4) A determination of the Indian child's tribe for purposes of ICWA and these guidelines does not constitute a determination for any other purpose or situation.

(d) The tribe designated as the Indian child's tribe may authorize another tribe to act as a representative for the tribe in a child custody case, including, for example, having the representative tribe perform home studies or expert witness services for the Indian child's tribe.

B.5. When must a State court dismiss an action?

Subject to B.8 (emergency procedures), the following limitations on a State court’s jurisdiction apply:

(a) The court must dismiss any child custody proceeding as soon as the court determines that it lacks jurisdiction.

(b) The court must make a determination of the residence and domicile of the Indian child. If either the residence or domicile is on a reservation where the tribe exercises exclusive jurisdiction over child custody proceedings, the State court must dismiss the State court proceedings, the agency must notify the tribe of the dismissal based on the tribe's exclusive jurisdiction, and the agency must transmit all available information regarding the Indian child custody proceeding to the tribal court.

(c) If the Indian child has been domiciled or previously resided on an Indian reservation, the State court must contact the tribal court to determine whether the child is a ward of the tribal court. If the child is a ward of a tribal court, the State court must dismiss the State court proceedings, the agency must notify the tribe of the dismissal, and the agency must transmit all available information regarding the Indian child custody proceeding to the tribal court.

B.6. What are the notice requirements for a child custody proceeding involving an Indian child?

(a) When an agency or court knows or has reason to know that the subject of an involuntary child custody proceeding is an Indian child, the agency or court must send notice of each such proceeding (including but not limited to a temporary custody hearing, any removal or
foster care placement, any adoptive placement, or any termination of parental or custodial rights) by registered mail with return receipt requested to:

(1) Each tribe where the child may be a member or eligible for membership;

(2) The child's parents; and

(3) If applicable, the Indian custodian.

(b) Notice may be sent via personal service or electronically in addition to the methods required by the Act, but such alternative methods do not replace the requirement for notice to be sent by registered mail with return receipt requested.

(c) Notice must be in clear and understandable language and include the following:

(1) Name of the child, the child's birthdate and birthplace;

(2) Name of each Indian tribe(s) in which the child is a member or may be eligible for membership;

(3) A copy of the petition, complaint or other document by which the proceeding was initiated;

(4) Statements setting out:

(i) The name of the petitioner and name and address of petitioner's attorney;

(ii) The right of the parent or Indian custodian to intervene in the proceedings.

(iii) The Indian tribe's right to intervene at any time in a State court proceeding for the foster care placement of or termination of a parental right.

(iv) If the Indian parent(s) or, if applicable, Indian custodian(s) is unable to afford counsel based on a determination of indigency by the court, counsel will be appointed to represent the parent or Indian custodian where authorized by State law.

(v) The right to be granted, upon request, a specific amount of additional time (up to 20 additional days) to prepare for the proceedings due to circumstances of the particular case.

(vi) The right to petition the court for transfer of the proceeding to tribal court under 25 U.S.C. 1911, absent objection by either parent: Provided, that such transfer is subject to declination by the tribal court.

(vii) The mailing addresses and telephone numbers of the court and information related to all parties to the proceeding and individuals notified under this section.
(viii) The potential legal consequences of the proceedings on the future custodial and parental rights of the Indian parents or Indian custodians.

(d) In order to assist the Indian tribe(s) in making a determination regarding whether the child is a member or eligible for membership, the agency or court should include additional information in the notice, such as:

(1) Genograms or ancestry charts for both parents, including all names known (maiden, married and former names or aliases); current and former addresses of the child's parents, maternal and paternal grandparents and great grandparents or Indian custodians; birthdates; places of birth and death; tribal affiliation including all known Indian ancestry for individuals listed on the charts, and/or other identifying information; and/or

(2) The addresses for the domicile and residence of the child, his or her parents, or the Indian custodian and whether either parent or Indian custodian is domiciled or a resident of an Indian reservation or in a predominantly Indian community.

(3) In the event that a parent has requested anonymity, the agency and court must take steps to keep information related to the parent confidential and sealed from disclosure.

(e) If the identity or location of the Indian parents, Indian custodians or tribes in which the Indian child is a member or eligible for membership cannot be ascertained, but there is reason to believe the child is an Indian child, notice of the child custody proceeding must be sent to the appropriate Bureau of Indian Affairs Regional Director (see www.bia.gov). To establish tribal identity, as much information as is known regarding the child’s direct lineal ancestors should be provided (see section B.6.(c) of these guidelines regarding notice requirements). The Bureau of Indian Affairs will not make a determination of tribal membership, but may, in some instances, be able to identify tribes to contact.

(f) Because child custody proceedings are usually conducted on a confidential basis, information contained in the notice should be kept confidential to the extent possible.

(g) The original or a copy of each notice sent under this section should be filed with the court together with any return receipts or other proof of service.

(h) If a parent or Indian custodian appears in court without an attorney, the court must inform him or her of the right to appointed counsel, the right to request that the proceeding be transferred to tribal court, the right to object to such transfer, the right to request additional time to prepare for the proceeding and the right (if the parent or Indian custodian is not already a party) to intervene in the proceedings.

(i) If the court or an agency has reason to believe that a parent or Indian custodian possesses limited English proficiency and is therefore not likely to understand the contents of the notice, the court or agency must, at no cost, provide a translated version of the notice or have the notice read and explained in a language that the parent or Indian custodian understands. To secure such translation or interpretation support, a court or
agency should contact the Indian child’s tribe or the local BIA agency for assistance in locating and obtaining the name of a qualified translator or interpreter.

(j) In voluntary proceedings, notice should also be sent in accordance with this section because the Indian tribe might have exclusive jurisdiction and/or the right to intervene. Further, notice to and involvement of the Indian tribe in the early stages of the proceedings aids the agency and court in satisfying their obligations to determine whether the child is an Indian child and in complying with 25 U.S.C. 1915.

(k) If the child is transferred interstate, regardless of whether the Interstate Compact on the Placement of Children (ICPC) applies, both the originating State court and receiving State court must provide notice to the tribe(s) and seek to verify whether the child is an Indian child.

(l) The notice requirement includes providing responses to requests for additional information, where available, in the event that a tribe indicates that such information is necessary to determine whether a child is an Indian child.

B.7. What time limits and extensions apply?

(a) No hearings regarding decisions for the foster care or termination of parental rights may begin until the waiting periods to which the parents or Indian custodians and to which the Indian child's tribe are entitled have passed. Additional extensions of time may also be granted beyond the minimum required by the Act.

(b) A tribe, parent or Indian custodian entitled to notice of the pendency of a child custody proceeding has a right, upon request, to be granted an additional 20 days from the date upon which notice was received in accordance with 25 U.S.C. 1912(a) to prepare for participation in the proceeding.

(c) The proceeding may not begin until all of the following dates have passed:

1. 10 days after each parent or Indian custodian (or Secretary where the parent or Indian custodian is unknown to the petitioner) has received notice in accordance with 25 U.S.C. 1912(a);

2. 10 days after the Indian child's tribe (or the Secretary if the Indian child's tribe is unknown to the party seeking placement) has received notice in accordance with 25 U.S.C. 1912(a);

3. 30 days after the parent or Indian custodian has received notice in accordance with 25 U.S.C. 1912(a), if the parent or Indian custodian has requested an additional 20 days to prepare for the proceeding; and

4. 30 days after the Indian child's tribe has received notice in accordance with 25 U.S.C. 1912(a), if the Indian child's tribe has requested an additional 20 days to prepare for the proceeding.
(d) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

B.8. What is the process for the emergency removal of an Indian child?

(a) The emergency removal and emergency placement of an Indian child in a foster home or institution under applicable State law is allowed only as necessary to prevent imminent physical damage or harm to the child. This requirement applies to all Indian children regardless of whether they are domiciled or reside on a reservation. This does not, however, authorize a State to remove a child from a reservation where a tribe exercises exclusive jurisdiction.

(b) Any emergency removal or emergency placement of any Indian child under State law must be as short as possible. Each involved agency or court must:

1. Diligently investigate and document whether the removal or placement is proper and continues to be necessary to prevent imminent physical damage or harm to the child;

2. Promptly hold a hearing to hear evidence and evaluate whether the removal or placement continues to be necessary whenever new information is received or assertions are made that the emergency situation has ended; and

3. Immediately terminate the emergency removal or placement once the court possesses sufficient evidence to determine that the emergency has ended.

(c) If the agency that conducts an emergency removal of a child whom the agency knows or has reason to know is an Indian child, the agency must:

1. Treat the child as an Indian child until the court determines that the child is not an Indian child;

2. Conduct active efforts to prevent the breakup of the Indian family as early as possible, including, if possible, before removal of the child;

3. Immediately take and document all practical steps to confirm whether the child is an Indian child and to verify the Indian child's tribe;

4. Immediately notify the child's parents or Indian custodians and Indian tribe of the removal of the child;

5. Take all practical steps to notify the child's parents or Indian custodians and Indian tribe about any hearings regarding the emergency removal or emergency placement of the child; and

6. Maintain records that detail the steps taken to provide any required notifications under section B.6 of these guidelines.
(d) A petition for a court order authorizing emergency removal or continued emergency physical custody must be accompanied by an affidavit containing 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. If such persons are unknown, a detailed explanation of what efforts have been made to locate them, including notice to the appropriate Bureau of Indian Affairs Regional Director (see www.bia.gov);

4. Facts necessary to determine the residence and the domicile of the Indian child;

5. If either the residence or domicile is believed to be on an Indian reservation, the name of the reservation;

6. The tribal affiliation of the child and of the parents and/or Indian custodians;

7. A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action;

8. 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 transfer the child to the tribe's jurisdiction;

9. A statement of the specific active efforts that have been taken to assist the parents or Indian custodians so the child may safely be returned to their custody; and

10. A statement of the imminent physical damage or harm expected and any evidence that the removal or emergency custody continues to be necessary to prevent such imminent physical damage or harm to the child.

(e) At any court hearing regarding the emergency removal or emergency placement of an Indian child, the court must determine whether the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. The court should accept and evaluate all information relevant to the agency's determination provided by the child, the child's parents, the child's Indian custodians, the child's tribe or any participants in the hearing.

(f) Temporary emergency custody should not be continued for more than 30 days. Temporary emergency custody may be continued for more than 30 days only if:

1. A hearing, noticed in accordance with these guidelines, is held and results in a determination by the court, supported by clear and convincing evidence and the testimony of at least one qualified expert witness, that custody of the child by the parent or Indian custodian is likely to result in imminent physical damage or harm to the child; or
(2) Extraordinary circumstances exist.

(g) The emergency removal or placement must terminate as soon as the imminent physical
damage or harm to the child which resulted in the emergency removal or placement no
longer exists, or, if applicable, as soon as the tribe exercises jurisdiction over the case,
whichever is earlier.

(h) Once an agency or court has terminated the emergency removal or placement, it must
expeditiously:

(1) Return the child to the parent or Indian custodian within one business day; or

(2) Transfer the child to the jurisdiction of the appropriate Indian tribe if the child is a ward
of a tribal court or a resident of or domiciled on a reservation; or

(3) Initiate a child custody proceeding subject to the provisions of the Act and these
guidelines.

(i) The court should allow, if it possesses the capability, alternative methods of participation
in State court proceedings by family members and tribes, such as participation by
telephone, videoconferencing, or other methods.

B.9. What are the procedures for determining improper removal?

(a) If, in the course of any Indian child custody proceeding, any party asserts or the court
has reason to believe that the Indian child may have been improperly removed from the
custody of his or her parent or Indian custodian, or that the Indian child has been
improperly retained, such as after a visit or other temporary relinquishment of custody, the
court must immediately stay the proceeding until a determination can be made on the
question of improper removal or retention, and such determination must be conducted
expeditiously.

(b) If the court finds that the Indian child was improperly removed or retained, the court
must terminate the proceeding and the child must be returned immediately to his or her
parents or Indian custodian, unless returning the child to his parent or custodian would
subject the child to imminent physical damage or harm.

C. Procedures for Making Requests for Transfer to Tribal Court

C.1. How are petitions for transfer of proceeding made?

(a) Either parent, the Indian custodian, or the Indian child's tribe may request, orally on the
record or in writing, that the State court transfer each distinct Indian child custody
proceeding to the tribal court of the child's tribe.

(b) The right to request a transfer occurs with each proceeding. For example, a parent may
request a transfer to tribal court during the first proceeding for foster placement and/or at a
proceeding to determine whether to continue foster placement, and/or at a later proceeding, for example at a hearing for termination of parental rights.

(c) The right to request a transfer is available at any stage of an Indian child custody proceeding, including during any period of emergency removal.

(d) The court should allow, if possible, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

C.2. What are the criteria and procedures for ruling on transfer petitions?

(a) Upon receipt of a petition to transfer by a parent, Indian custodian or the Indian child's tribe, the State court must transfer the case unless any of the following criteria are met:

(1) Either parent objects to such transfer;

(2) The tribal court declines the transfer; or

(3) The court determines that good cause exists for denying the transfer.

(b) To minimize delay, the court should expeditiously provide all records related to the proceeding to the tribal court.

C.3. How is a determination of “good cause” made?

(a) If the State court believes, or any party asserts, that good cause not to transfer exists, the reasons for such belief or assertion must be stated on the record or in writing and made available to the parties who are petitioning for transfer.

(b) Any party to the proceeding must have the opportunity to provide the court with views regarding whether good cause to deny transfer exists.

(c) In determining whether good cause exists, the court may not consider whether the case is at an advanced stage or whether transfer would result in a change in the placement of the child because the Act created concurrent, but presumptively, tribal jurisdiction over proceedings involving children not residing or domiciled on the reservation, and seeks to protect, not only the rights of the Indian child as an Indian, but the rights of Indian communities and tribes in retaining Indian children. Thus, whenever a parent or tribe seeks to transfer the case it is presumptively in the best interest of the Indian child, consistent with the Act, to transfer the case to the jurisdiction of the Indian tribe.

(d) In addition, in determining whether there is good cause to deny the transfer, the court may not consider:

(1) The Indian child's contacts with the tribe or reservation;
(2) Socio-economic conditions or any perceived inadequacy of tribal or Bureau of Indian Affairs social services or judicial systems; or

(3) The tribal court’s prospective placement for the Indian child.

(e) The burden of establishing good cause not to transfer is on the party opposing the transfer.

C.4. What happens when a petition for transfer is made?

(a) Upon receipt of a transfer petition the State court must promptly notify the tribal court in writing of the transfer petition and request a response regarding whether the tribal court wishes to decline the transfer. The notice should specify how much time the tribal court has to make its decision; provided that the tribal court has at least 20 days from the receipt of notice of a transfer petition to decide whether to accept or decline the transfer.

(b) The tribal court should inform the State court of its decision to accept or decline jurisdiction within the time required or may request additional time; provided that the reasons for additional time are explained.

(c) If the tribal court accepts the transfer, the State court should promptly provide the tribal court with all court records.

D. Adjudication of Involuntary Placements, Adoptions, or Terminations or Terminations of Parental Rights

D.1. Who has access to reports or records?

(a) The court must inform each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child of his or her right to timely examination of all reports or other documents filed with the court and all files upon which any decision with respect to such action may be based.

(b) Decisions of the court may be based only upon reports, documents or testimony presented on the record.

D.2. What steps must a party take to petition a State court for certain actions involving an Indian child?

(a) Any party petitioning a State court for foster care placement or termination of parental rights to an Indian child must demonstrate to the court that prior to, and until the commencement of, the proceeding, active efforts have been made to avoid the need to remove the Indian child from his or her parents or Indian custodians and show that those efforts have been unsuccessful.
(b) Active efforts must be documented in detail and, to the extent possible, should involve and use the available resources of the extended family, the child’s Indian tribe, Indian social service agencies and individual Indian care givers.

D.3. What are the applicable standards of evidence?

(a) The court may not issue an order effecting a foster care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child’s continued custody with the child’s parents or Indian custodian is likely to result in serious harm to the child.

(b) The court may not order a termination of parental rights unless the court’s order is supported by evidence beyond a reasonable doubt, supported by the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious harm to the child.

(c) Clear and convincing evidence must show a causal relationship between the existence of particular conditions in the home that are likely to result in serious emotional or physical damage to the particular child who is the subject of the proceeding. Evidence that shows only the existence of community or family poverty or isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear and convincing evidence that continued custody is likely to result in serious emotional or physical damage to the child.

D.4. Who may serve as a qualified expert witness?

(a) A qualified expert witness should have specific knowledge of the Indian tribe’s culture and customs.

(b) Persons with the following characteristics, in descending order, are presumed to meet the requirements for a qualified expert witness:

1. A member of the Indian child’s tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and childrearing practices.

2. A member of another tribe who is recognized to be a qualified expert witness by the Indian child’s tribe based on their knowledge of the delivery of child and family services to Indians and the Indian child’s tribe.

3. A layperson who is recognized by the Indian child’s tribe as having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and childrearing practices within the Indian child’s tribe.

4. A professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child’s tribe.

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(c) The court or any party may request the assistance of the Indian child's tribe or the Bureau of Indian Affairs agency serving the Indian child's tribe in locating persons qualified to serve as expert witnesses.

E. Voluntary Proceedings

E.1. What actions must an agency and State court undertake in voluntary proceedings?

(a) Agencies and State courts must ask whether a child is an Indian child in any voluntary proceeding under sections B.2. to B.4. of these guidelines.

(b) Agencies and State courts should provide the Indian tribe with notice of the voluntary child custody proceedings, including applicable pleadings or executed consents, and their right to intervene under section B.6. of these guidelines.

E.2. How is consent to termination of parental rights, foster care placement or adoption obtained?

(a) A voluntary termination of parental rights, foster care placement or adoption must be executed in writing and recorded before a court of competent jurisdiction.

(b) Prior to accepting the consent, the court must explain the consequences of the consent in detail, such as any conditions or timing limitations for withdrawal of consent and, if applicable, the point at which such consent is irrevocable.

(c) A certificate of the court must accompany a written consent and must certify that the terms and consequences of the consent were explained in detail in the language of the parent or Indian custodian, if English is not the primary language, and were fully understood by the parent or Indian custodian.

(d) Execution of consent need not be made in open court where confidentiality is requested or indicated.

(e) A consent given prior to or within 10 days after birth of the Indian child is not valid.

E.3. What information should a consent document contain?

(a) The consent document must contain the name and birthdate of the Indian child, the name of the Indian child's tribe, identifying tribal enrollment number, if any, or other indication of the child's membership in the tribe, and the name and address of the consenting parent or Indian custodian. If there are any conditions to the consent, the consent document must clearly set out the conditions.

(b) A consent to foster care placement should contain, in addition to the information specified in subsection (a), the name and address of the person or entity by or through whom the placement was arranged, if any, or the name and address of the prospective foster parents, if known at the time.
E.4. How is withdrawal of consent achieved in a voluntary foster care placement?

(a) Withdrawal of consent must be filed in the same court where the consent document was executed.

(b) When a parent or Indian custodian withdraws consent to foster care placement, the child must be returned to that parent or Indian custodian immediately.

E.5. How is withdrawal of consent to a voluntary adoption achieved?

(a) A consent to termination of parental rights or adoption may be withdrawn by the parent at any time prior to entry of a final decree of voluntary termination or adoption, whichever occurs later. To withdraw consent, the parent must file, in the court where the consent is filed, an instrument executed under oath asserting his or her intention to withdraw such consent.

(b) The clerk of the court in which the withdrawal of consent is filed must promptly notify the party by or through whom any preadoptive or adoptive placement has been arranged of such filing and the child must be returned to the parent or Indian custodian as soon as practicable.

F. Dispositions

F.1. When do the placement preferences apply?

(a) In any preadoptive, adoptive or foster care placement of an Indian child, the Act's placement preferences apply; except that, if the Indian child's tribe has established by resolution a different order of preference than that specified in the Act, the agency or court effecting the placement must follow the tribe's placement preferences.

(b) The agency seeking a preadoptive, adoptive or foster care placement of an Indian child must always follow the placement preferences. If the agency determines that any of the preferences cannot be met, the agency must demonstrate through clear and convincing evidence that a diligent search has been conducted to seek out and identify placement options that would satisfy the placement preferences specified in sections F.2. or F.3. of these guidelines, and explain why the preferences could not be met. A search should include notification about the placement hearing and an explanation of the actions that must be taken to propose an alternative placement to:

1. The Indian child's parents or Indian custodians;
2. All of the known, or reasonably identifiable, members of the Indian child's extended family members;
3. The Indian child's tribe;
4. In the case of a foster care or preadoptive placement:
(i) All foster homes licensed, approved, or specified by the Indian child’s tribe; and

(ii) All Indian foster homes located in the Indian child's State of domicile that are licensed or approved by any authorized non-Indian licensing authority.

(c) Where there is a request for anonymity, the court should consider whether additional confidentiality protections are warranted, but a request for anonymity does not relieve the agency or the court of the obligation to comply with the placement preferences.

(d) Departure from the placement preferences may occur only after the court has made a determination that good cause exists to place the Indian child with someone who is not listed in the placement preferences.

(e) Documentation of each preadoptive, adoptive or foster care placement of an Indian child under State law must be provided to the State for maintenance at the agency. Such documentation must include, at a minimum; the petition or complaint; all substantive orders entered in the proceeding; the complete record of, and basis for, the placement determination; and, if the placement deviates from the placement preferences, a detailed explanation of all efforts to comply with the placement preferences and the court order authorizing departure from the placement preferences.

F.2. What placement preferences apply in adoptive placements?

(a) In any adoptive placement of an Indian child under State law, preference must be given in descending order, as listed below, to placement of the child with:

(1) A member of the child’s extended family;

(2) Other members of the Indian child’s tribe; or

(3) Other Indian families, including families of unwed individuals.

(b) The court should, where appropriate, also consider the preference of the Indian child or parent.

F.3. What placement preferences apply in foster care or preadoptive placements?

In any foster care or preadoptive placement of an Indian child:

(a) The child must be placed in the least restrictive setting that:

(1) Most approximates a family;

(2) Allows his or her special needs to be met; and

(3) Is in reasonable proximity to his or her home, extended family, and/or siblings.
(b) Preference must be given, in descending order as listed below, to placement of the child with:

(1) A member of the Indian child's extended family;

(2) A foster home, licensed, approved or specified by the Indian child's tribe, whether on or off the reservation;

(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.

F.4. How is a determination for "good cause" to depart from the placement preferences made?

(a) If any party asserts that good cause not to follow the placement preferences exists, the reasons for such belief or assertion must be stated on the record or in writing and made available to the parties to the proceeding and the Indian child's tribe.

(b) The party seeking departure from the preferences bears the burden of proving by clear and convincing evidence the existence of "good cause" to deviate from the placement preferences.

(c) A determination of good cause to depart from the placement preferences must be based on one or more of the following considerations:

(1) The request of the parents, if both parents attest that they have reviewed the placement options that comply with the order of preference.

(2) The request of the child, if the child is able to understand and comprehend the decision that is being made.

(3) The extraordinary physical or emotional needs of the child, such as specialized treatment services that may be unavailable in the community where families who meet the criteria live, as established by testimony of a qualified expert witness; provided that extraordinary physical or emotional needs of the child does not include ordinary bonding or attachment that may have occurred as a result of a placement or the fact that the child has, for an extended amount of time, been in another placement that does not comply with the Act. The good cause determination does not include an independent consideration of the best interest of the Indian child because the preferences reflect the best interests of an Indian child in light of the purposes of the Act.

(4) The unavailability of a placement after a showing by the applicable agency in accordance with section F.1., and a determination by the court that active efforts have been made to find placements meeting the preference criteria, but none have been located. For purposes
of this analysis, a placement may not be considered unavailable if the placement conforms 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.

(d) The court should consider only whether a placement in accordance with the preferences meets the physical, mental and emotional needs of the child; and may not depart from the preferences based on the socio-economic status of any placement relative to another placement.

G. Post-Trial Rights

G.1. What is the procedure for petitioning to vacate an adoption?

(a) Within two years after a final decree of adoption of any Indian child by a State court, or within any longer period of time permitted by the law of the State, a parent who executed a consent to termination of paternal rights or adoption of that child may petition the court in which the final adoption decree was entered to vacate the decree and revoke the consent on the grounds that consent was obtained by fraud or duress, or that the proceeding failed to comply with ICWA.

(b) Upon the filing of such petition, the court must give notice to all parties to the adoption proceedings and the Indian child's tribe.

(c) The court must hold a hearing on the petition.

(d) Where the court finds that the parent's consent was obtained through fraud or duress, the court must vacate the decree of adoption, order the consent revoked and order that the child be returned to the parent.

G.2. Who can make a petition to invalidate an action?

(a) Any of the following may petition any court of competent jurisdiction to invalidate an action for foster care placement or termination of parental rights where it is alleged that the Act has been violated:

(1) An Indian child who is the subject of any action for foster care placement or termination of parental rights;

(2) A parent or Indian custodian from whose custody such child was removed; and

(3) The Indian child's tribe.

(b) Upon a showing that an action for foster care placement or termination of parental rights violated any provision of 25 U.S.C. 1911, 1912, or 1913, the court must determine whether it is appropriate to invalidate the action.
(c) There is no requirement that the particular party's rights under the Act be violated to petition for invalidation; rather, any party may challenge the action based on violations in implementing the Act during the course of the child custody proceeding. For example, it is acceptable for the tribe to petition to invalidate an action because it violated the rights of a parent, or for a parent to petition to invalidate an action because the action violated the statutory rights of the tribe. ICWA is designed to provide rights to ensure that tribes, parents, and children are protected. In light of Congressional findings in ICWA, it is presumed that the Indian child is disadvantaged if any of those rights are violated.

(d) The court should allow, if it possesses the capability, alternative methods of participation in State court proceedings by family members and tribes, such as participation by telephone, videoconferencing, or other methods.

G.3. What are the rights of adult adoptees?

(a) Upon application by an Indian individual who has reached age 18 who was the subject of an adoptive placement, the court that entered the final decree must inform such individual of the tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights, which may include tribal membership, resulting from the individual's tribal relationship.

(b) This section should be applied regardless of whether the original adoption was subject to the provisions of the Act.

(c) Where State law prohibits revelation of the identity of the biological parent, assistance of the Bureau of Indian Affairs should be sought to help an adoptee who is eligible for membership in a tribe to become a tribal member without breaching the Privacy Act or confidentiality of the record.

(d) In States where adoptions remain closed, the relevant agency should, at a minimum, communicate directly with the tribe's enrollment office and provide the information necessary to facilitate the establishment of the adoptee's tribal membership.

(e) Agencies should work with the tribe to identify at least one tribal designee familiar with 25 U.S.C. 1917 to assist adult adoptees statewide with the process of reconnecting with their tribes and to provide information to State judges about this provision on an annual basis.

G.4. When must notice of a change in child's status be given?

(a) Notice by the court, or an agency authorized by the court, must be given to the child's biological parents or prior Indian custodians and the Indian child's tribe whenever:

(1) A final decree of adoption of an Indian child has been vacated or set aside; or

(2) The adoptive parent has voluntarily consented to the termination of his or her parental rights to the child; or
(3) Whenever an Indian child is removed from a foster care home or institution to another foster care placement, preadoptive placement, or adoptive placement.

(b) The notice must inform the recipient of the right to petition for return of custody of the child.

(c) A parent or Indian custodian may waive his or her right to such notice by executing a written waiver of notice filed with the court. The waiver may be revoked at any time by filing with the court a written notice of revocation. A revocation of the right to receive notice does not affect any proceeding which occurred before the filing of the notice of revocation.

G.5. What information must States furnish to the Bureau of Indian Affairs?

(a) Any state entering a final adoption decree or order must furnish a copy of the decree or order to the Bureau of Indian Affairs, Chief, Division of Human Services, 1849 C Street NW., Mail Stop 4513 MIB, Washington, DC 20240, along with the following information:

(1) Birth name of the child, tribal affiliation and name of the child after adoption;

(2) Names and addresses of the biological parents;

(3) Names and addresses of the adoptive parents;

(4) Name and contact information for any agency having files or information relating to the adoption;

(5) Any affidavit signed by the biological parent or parents asking that their identity remain confidential; and

(6) Any information relating to the enrollment or eligibility for enrollment of the adopted child.

(b) Confidentiality of such information must be maintained and is not subject to the Freedom of Information Act, 5 U.S.C. 552, as amended.

G.6. How must the State maintain records?

(a) The State must establish a single location where all records of every voluntary or involuntary foster care, preadoptive placement and adoptive placement of Indian children by courts of that State will be available within seven days of a request by an Indian child's tribe or the Secretary.

(b) The records must contain, at a minimum, the petition or complaint, all substantive orders entered in the proceeding, and the complete record of the placement determination.
Kevin K. Washburn,
Assistant Secretary—Indian Affairs.
[FR Doc. 2015-03925 Filed 2-24-15; 8:45 am]
BILLING CODE 4310-4J-P
APPENDIX C: ADDITIONAL RESOURCES


