

# ICWA: Working with Native American Families and Tribes

Trainer Guide



**Training Version 3.1 | 2017**

Use Test Version 3.1 for Evaluation

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## Acknowledgements

California's Common Core Curricula for Child Welfare Workers is the result of the invaluable work and guidance of a great many people throughout the child welfare system in California and across the country. It would be impossible to list all of the individuals who contributed, but some groups of people will be acknowledged here.

The Content Development Oversight Group (CDOG) a subcommittee of the Statewide Training and Education Committee (STEC) provided overall guidance for the development of the curricula. Convened by the California Social Work Education Center (CalSWEC) and the California Department of Social Services (CDSS), CDOG membership includes representatives from the Regional Training Academies (RTAs), the University Consortium for Children and Families in Los Angeles (UCCF), and Los Angeles County Department of Children and Family Services.

In addition to CDOG, a Common Core 3.0 subcommittee comprised of representatives from the RTAs, the Resource Center for Family Focused Practice, and counties provided oversight and approval for the curriculum development process.

Along the way, many other people provided their insight and hard work, attending pilots of the trainings, reviewing sections of curricula, or providing other assistance.

California's child welfare system greatly benefits from this collaborative endeavor, which helps our workforce meet the needs of the state's children and families.

The Children's Research Center provided technical support as well as The Structured Decision Making System that includes the SDM 3.0 Policy and Procedure Manual and Decision Making Tools. These resources are used in compliance with CRC copyright agreements with California. Additionally, content in this curriculum has been adapted from CRC's SDM 3.0 classroom curriculum to meet the training needs in California.

In compliance with the Indian Child Welfare Act (1978) and the California Practice Model, social workers must identify American Indian/Alaska Native children in the system. For an overview, view *Implementing the Indian Child Welfare Act* at <https://www.youtube.com/watch?v=BIQG65KFKGs>

The curriculum is developed with public funds and is intended for public use. For information on use and citation of the curriculum, please refer to:

[http://calswec.berkeley.edu/CalSWEC/Citation\\_Guidelines.doc](http://calswec.berkeley.edu/CalSWEC/Citation_Guidelines.doc)



FOR MORE INFORMATION on California's Core Curricula, as well as the latest version of this curriculum, please visit the California Social Work Education Center (CalSWEC) website:

<http://calswec.berkeley.edu>

# Introduction

*Please read carefully as a first step in preparing to train this curriculum.*

**IMPORTANT NOTE:** Each curriculum within the Common Core series is mandated and standardized for all new child welfare workers in the state of California. It is essential that all trainers who teach any of the Common Core Curricula in California instruct trainees using the standardized Training Content as provided. The training of standardized content also serves as the foundation for conducting standardized testing to evaluate and improve the effectiveness of new worker training statewide.

## GENERAL INFORMATION

Common Core curriculum and training for new child welfare workers in California is designed to be generalizable across the state, cover basic child welfare knowledge and skills and is important for all CWS positions within an agency.

The Common Core Curriculum model is designed to define clearly the content to be covered by the trainer. Each curriculum consists of a *Trainee's Guide* and a *Trainer's Guide*. Except where indicated, the curriculum components outlined below are identical in both the Trainee's and Trainer's Guides. The Trainee's Guide contains the standardized information which is to be conveyed to trainees.

For an overview of the training, it is recommended that trainers first review the Agenda and Lesson Plan. After this overview, trainers can proceed to review the activities for each training segment in the Trainer's Guide and the Training Content in the Trainee's Guide in order to become thoroughly familiar with each topic and the training activities. The components of the Trainer's and Trainee's Guides are described under the subheadings listed below.

The curricula are developed with public funds and intended for public use. For information on use and citation of the curricula, please refer to the Guidelines for Citation:

[http://calswec.berkeley.edu/CalSWEC/CCCCA\\_Citation\\_Guidelines.doc](http://calswec.berkeley.edu/CalSWEC/CCCCA_Citation_Guidelines.doc)

Please note that each individual curriculum within the Common Core Curricula is subject to periodic revision. The curricula posted on the CalSWEC website are the most current versions available. For questions regarding the curricula, contact Joanne Pritchard [jpritchard@berkeley.edu](mailto:jpritchard@berkeley.edu) or call CalSWEC at 510-642-9272.

## COMPONENTS OF THE TRAINER'S AND TRAINEE'S GUIDES

### Learning Objectives

The Learning Objectives serve as the basis for the Training Content that is provided to both the trainer and trainees. All the Learning Objectives for the curriculum are listed in both the Trainer's and Trainee's Guides. The Learning Objectives are subdivided into three categories: Knowledge, Skills, and Values. They are numbered in series beginning with K1 for knowledge, S1 for skills, and V1 for values. The Learning Objectives are also indicated in the Lesson Plan for each segment of the curriculum.

*Knowledge Learning Objectives* entail the acquisition of new information and often require the ability to recognize or recall that information. *Skill Learning Objectives* involve the application of knowledge and frequently require the demonstration of such application. *Values Learning Objectives* describe attitudes, ethics, and desired goals and outcomes for practice. Generally, *Values Learning Objectives* do not easily lend themselves to measurement, although values acquisition may sometimes be inferred through other responses elicited during the training process.

## **Agenda**

The Agenda is a simple, sequential outline indicating the order of events in the training day, including the coverage of broad topic areas, pre-tests and/or post-tests, training activities, lunch, and break times. The Agenda for trainers differs slightly from the Agenda provided to trainees in that the trainer's agenda indicates duration; duration is not indicated on the agenda for trainees.

## **Lesson Plan (Trainer's Guide only)**

The Lesson Plan in the Trainer's Guide is a mapping of the structure and flow of the training. It presents each topic and activity and indicates the duration of training time for each topic.

The Lesson Plan is divided into major sections by Day 1, Day 2, and Day 3 of the training, as applicable, and contains two column headings: Segment and Methodology and Learning Objectives. The Segment column provides the topic and training time for each segment of the training. The Methodology and Learning Objectives column reflects the specific activities and objectives that are covered in each segment. As applicable, each activity is numbered sequentially within a segment, with activities for Segment 1 beginning with Activity 1A, Segment 2 beginning with Activity 2A, etc.

## **Evaluation Protocols**

It is necessary to follow the step-by-step instructions detailed in this section concerning pre-tests, post-tests, and skill evaluation (as applicable to a particular curriculum) in order to preserve the integrity and consistency of the training evaluation process. Additionally, trainers should not allow trainees to take away or make copies of any test materials so that test security can be maintained.

## **Training Segments (Trainer's Guide only)**

The Training Segments are the main component of the Trainer's Guide. They contain guidance and tips for the trainer to present the content and to conduct each Training Activity. Training Activities are labeled and numbered to match the titles, numbering, and lettering in the Lesson Plan. Training Activities contain detailed descriptions of the activities as well as step-by-step tips for preparing, presenting, and processing the activities. The description also specifies the Training Content that accompanies the activity, and the time and materials required.

Occasionally, a Trainer's Supplement is provided that includes additional information or materials that the trainer needs. The Trainer's Supplement follows the Training Activity to which it applies.

## **Training Content (Trainee's Guide only)**

The Training Content in the Trainee's Guide contains the standardized text of the curriculum and provides the basis for knowledge testing of the trainees. Training activities are labeled and numbered to match the titles and numbering in the Lesson Plan.

## **Supplemental Handouts**

Supplemental Handouts refer to additional handouts not included in the Trainee's Guide. For example, Supplemental Handouts include PowerPoint printouts that accompany in-class presentations or worksheets for training activities. Some documents in the Supplemental Handouts are placed there because their size or format requires that they be printed separately.

## **References and Bibliography**

The Trainer's Guide and Trainee's Guide each contain the same References and Bibliography. The References and Bibliography indicates the sources that were reviewed by the curriculum designer(s) to prepare and to write the main, supplemental and background content information, training tips, training activities and any other information conveyed

in the training materials. It also includes additional resources that apply to a particular content area. The References and Bibliography may include the following:

- All-County Letters (ACLs) and All-County Information Notices (ACINs) issued by the California Department of Social Services (CDSS);
- Legal References (as applicable); and
- General References and Bibliography

In certain curricula within the Common Core series, the References and Bibliography may be further divided by topic area.

### **Materials Checklist (Trainer's Guide only)**

In order to facilitate the training preparation process, the Materials Checklist provides a complete listing of all the materials needed for the entire training. Multi-media materials include such items as videos, audio recordings, posters, and other audiovisual aids. Materials specific to each individual training activity are also noted in the Training Segments in the Trainer's Guide.

### **Posters (Trainer's Guide only)**

Some curricula feature materials in the Trainer's Guide that can be used as posters or wall art.

## Tips for Training this Curriculum

**ICWA: Working with Native American Families and Tribes** is part of a suite of ICWA-related curricula designed to meet the diverse regional and cultural needs of American Indian communities throughout California. The most critical aspects of this 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, the curricula include 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 Trainees 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.

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.

**ICWA: Working with Native American Families and Tribes** 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.

### Values

- **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.
- **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.
- **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.
- **Strength-based Approach** utilizes experiences and strengths of trainers and Trainees to achieve outcomes.
- **Reciprocity** is the generous exchange of time, resources and respect to support the development of relationships that ensure positive outcomes.
- **Professionalism** is exhibited in respectful communications and demeanor while maintaining dignity and decorum throughout the training.
- **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.
- **Creating Positive Outcomes for Tribal Foster Youth** is the intention for each action.

### Ideals

- The training will be conducted in partnership with local Tribes, Tribal families, children and communities, ICWA advocates/social workers and Tribal family service programs.
- The training is revolutionary, unlike anything Trainees have experienced before, and a life-changing experience.

- Attending this training will be like coming to a special event: Trainees 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.
- The training is an immersion process designed so the Trainee understands and learns Tribal culture and values through experience.
- 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.

### **The Curriculum**

This six-hour classroom curriculum is adapted from the Tribal STAR eight-hour, full-day training. The learning objectives have been enhanced by California’s ICWA workgroup and Tribal community advisors. The curriculum incorporates the Bureau of Indian Affairs’ 2016 Guidelines of Implementing the Indian Child Welfare Act and the 2016 ICWA Regulations. Trainers are encouraged to attend Tribal STAR Training for Trainers to observe and learn the model as it is intended to be presented.

This curriculum is intended to provide Trainees 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 Trainees in achieving the cultural humility required to engage with Tribal children, families, caregivers and Tribes.

The authors highly recommend:

1. Co-training this class to model collaboration and to provide the opportunity for the “voices” of each trainer to be heard. It is preferred that one trainer be 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.
3. If a Tribal panel will be a part of the training, engage with local Tribal representatives ahead of time. See: *Tips for Involving Local Tribal Experts* on the Tribal STAR website and below.
4. Providing a continental breakfast and lunch for Trainees. In the alternative, Trainees could be encouraged to bring their own breakfast or food for a potluck lunch. Sharing food is an important cultural tradition in Native American communities. It affords people the opportunity to gather, build community and to have open dialogue. This activity helps social workers to understand how to engage with Tribal community members, learn protocol and learn how to balance rules of their job (i.e., no gifts) with culturally appropriate engagement and relationship building.
5. Limiting classroom participation to no more than 36 Trainees (6 groups of 6 people) in order to ensure the trainer is able to effectively and appropriately manage the conversations that will arise during the course of the classroom training.

### **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. The choice of the designation of ‘Trainee’ in lieu of ‘trainee’ emphasizes the collaborative nature of learning.

### **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

### **The Trainer’s Guide**

The Classroom Trainer’s Guide is intended to be a comprehensive tool to assist trainers in having a successful classroom training day. For each segment, the Guide is divided into the following sections: “Description of Activity,” “During the Activity,” and “Trainer Information.”

The “Description of Activity” section informs the trainer of the specific activity of each segment. The “During the Activity” section tells the what to do during the segment and may suggested facilitation questions along with Trainee take-away and specific information that must be conveyed for each segment. The “Trainer Information” section contains comprehensive information on the segment topic to prepare the trainer to deliver information and facilitate dialogue. For trainers who are unfamiliar or have little experience training this curriculum model, the information *may* be used as a script for the lecture or its main points summarized for the lecture. Caution should be used if the trainer information is to be used as a script as doing so may create challenges in ensuring each segment is delivered within the designated time. For those trainers who have received training from Tribal STAR and who are more experienced in training the model, the information can be used as a reference. In this way the Classroom Trainer’s Guide offers trainers flexibility in using the information in the most effective way possible.

### **Tips for Involving Local Tribal Experts**

Some of the training Trainees 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, identify in advance ICWA agents, Tribal leaders, Tribal youth, and Tribal families. Invite 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 or other formal setting, and to utilize the culturally appropriate methods of self-introduction as described in this training curriculum. It is best to mention names of people you know and who your guests 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 guidance in helping 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 Trainee 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 Trainees and to stir a number of strong emotions in others. It is difficult to predict how Trainees will respond, or to advise in advance how to manage these responses. Tribal STAR-trained 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 Trainees 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 Trainees 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 Trainees better understand the children and families they serve. Trainers should tell Trainees 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 Trainee 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 inform the Trainee that they may leave the training, and that they are encouraged to pass their case along to a colleague who is better able to manage the ICWA case. Trainers should also inform the Trainee 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 Trainees noted that despite their history, Native Americans in general have maintained a sense of connection to their culture and to the land, while the African-American Trainees have not. The Trainees 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 Trainees 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. Trainees 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 Trainee 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 Trainees to regroup.

Supplemental resources are available at: <http://theacademy.sdsu.edu/Tribal STAR>

### **FAMILY FRIENDLY LANGUAGE**

Trainers are the example for modeling this for Trainees. The hope is that the work is done with families, not on clients. Use words such as parents, young adults, youth, child, family...rather than clients. We want to model that families involved in child welfare services are not separate from us as social workers, but part of our community. This is the goal of the CA Child Welfare Core Practice Model as well and reflects the behaviors we want to see demonstrated in social workers work with families. For more information on the Californian Child Welfare Core Practice Model visit the CalSWEC website at <http://calswec.berkeley.edu/california-child-welfare-core-practice-model-0>.

## SAFETY ORGANIZED PRACTICE

Some content in the Common Core Curriculum was developed by the National Council on Crime and Delinquency (NCCD) and the Northern California Training Academy as part of the Safety Organized Practice Curriculum. Please note, not all California Counties are actively practicing Safety Organized Practice. However, the framework, principles and concepts are integrated throughout the curriculum as tools and best practices. Safety Organized Practice (SOP) is a collaborative practice approach that emphasizes the importance of teamwork in child welfare. SOP aims to build and strengthen partnerships with the child welfare agency and within a family by involving their informal support networks of friends and family members. A central belief in SOP is that all families have strengths. SOP uses strategies and techniques that align with the belief that a child and his or her family are the central focus, and that the partnership exists in an effort to find solutions that ensure safety, permanency, and well-being for children. Safety Organized Practice is informed by an integration of practices and approaches including:

- Solution-focused practice<sup>1</sup>
- Signs of Safety<sup>2</sup>
- Structured Decision making<sup>3</sup>
- Child and family engagement<sup>4</sup>
- Risk and safety assessment research
- Group Supervision and Interactional Supervision<sup>5</sup>
- Appreciative Inquiry<sup>6</sup>
- Motivational Interviewing<sup>7</sup>
- Consultation and Information Sharing Framework<sup>8</sup>
- Cultural Humility
- Trauma-informed practice

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<sup>1</sup> Berg, I.K. and De Jong, P. (1996). Solution-building conversations: co-constructing a sense of competence with clients. *Families in Society*, pp. 376-391; de Shazer, S. (1985). *Keys to solution in brief therapy*. NY: Norton; Saleebey, D. (Ed.). (1992). *The strengths perspective in social work practice*. NY: Longman.

<sup>2</sup> Turnell, A. (2004). Relationship grounded, safety organized child protection practice: dreamtime or real time option for child welfare? *Protecting Children*, 19(2): 14-25; Turnell, A. & Edwards, S. (1999). *Signs of Safety: A safety and solution oriented approach to child protection casework*. NY: WW Norton; Parker, S. (2010). *Family Safety Circles: Identifying people for their safety network*. Perth, Australia: Aspirations Consultancy.

<sup>3</sup> Children's Research Center. (2008). *Structured Decision Making: An evidence-based practice approach to human services*. Madison: Author.

<sup>4</sup> Weld, N. (2008). The three houses tool: building safety and positive change. In M. Calder (Ed.) *Contemporary risk assessment in safeguarding children*. Lyme Regis: Russell House Publishing.

<sup>5</sup> Lohrbach, S. (2008). Group supervision in child protection practice. *Social Work Now*, 40, pp. 19-24.

<sup>6</sup> Cooperrider, D. L. (1990). Positive image, positive action: The affirmative basis of organizing. In S. Srivasta, D.L. Cooperrider and Associates (Eds.). *Appreciative management and leadership: The power of positive thought and action in organization*. San Francisco: Jossey-Bass.

<sup>7</sup> Miller, W.R., & Rollnick, S. (2012). *Motivational Interviewing*, (3<sup>rd</sup> Ed.). NY: Guilford Press.

<sup>8</sup> Lohrbach, S. (1999). *Child Protection Practice Framework - Consultation and Information Sharing*. Unpublished manuscript; Lohrbach, S. & Sawyer, R. (2003). Family Group Decision Making: a process reflecting partnership based practice. *Protecting Children*. 19(2):12-15.

## Evaluation

The California Social Work Education Center (CalSWEC), along with California's four Regional Training Academies (RTAs) and University Consortium of Children and Families (UCCF), will maintain the process of evaluating common core training for new child welfare workers. In addition to Trainee satisfaction surveys, two types of evaluation will be used: knowledge testing and skills testing. These evaluations have three main purposes: 1. To improve trainings' effectiveness in relation to trainees' needs in order to help them better serve children, youth, and families, 2. To see if the training has been effective in getting its points across, and 3. To establish a standard method of evaluating training effectiveness in response to federal requirements in the Program Improvement Plan (PIP) for California. Thus, the evaluations are not meant to evaluate individuals. The purpose is to obtain feedback on course design and effectiveness.

Pre/post-test is most often used to evaluate knowledge gained as a result of participating in the trainings. Skill-based competencies are competencies that define a desired behavior, activity, or interaction, such as interviewing a child, assessing risk, identifying indicators of child maltreatment, writing a court report, writing a case plan, etc. Embedded evaluation either builds on existing exercises or designs new tasks that can be used as both instructional and evaluation opportunities. This linkage enhances trainee learning and provides feedback to trainers for course improvement, while also providing important data on trainees' acquisition of skills (Parry and Berdie, 2004).

In order to use the data collected in the pre/post-tests and/or embedded evaluation process to improve future versions of the curriculum, there must be high levels of standardization in the content and delivery each time training is delivered. Trainers must follow the curriculum as it is written and include the activities that lead to the eventual evaluation segment. Further, trainers must follow an evaluation protocol for completing the embedded evaluation activity. This protocol is not included in this document, but is available separately from the Regional Training Academy or University Consortium for Children and Families. Please follow this protocol when conducting the evaluation activity and debrief.

# Agenda

Segment 1:	Getting Started	9:00- 10:05 am
	<ul style="list-style-type: none"><li>• Welcome, Introductions, Housekeeping (optional Talking Circle)</li><li>• Training Overview; eLearning review, Historical Context of ICWA:</li><li>• Two Apologies</li><li>• Basic Provisions of ICWA</li><li>• Activity: What do we hope to gain from today?</li></ul>	
<b>BREAK</b>		<b>10:05-10:20 am</b>
Segment 2:	California Indians	10:20-10:50 am
Segment 3:	History, Purpose and Spirit of ICWA	10:50-11:00 am
Segment 4:	Historical Trauma	11:00-11:40 am
Segment 5:	Remedying Bias through Contributions	11:40-11:45 am
<b>LUNCH BREAK 60 MINUTES</b>		<b>11:45 am-12:45 pm</b>
Segment 6:	ICWA Requirements and Social Work Practice	12:45-2:30 pm
	<ul style="list-style-type: none"><li>• Inquiry and Notice</li><li>• Active Efforts</li><li>• Placement</li></ul>	
<b>BREAK</b>		<b>2:30-2:45 pm</b>
	<ul style="list-style-type: none"><li>• Tribal Sovereignty</li><li>• Concurrent Planning</li><li>• Qualified Expert Witness</li></ul>	<b>2:45-3:05 pm</b>
Segment 7:	What Stands Out from Today	3:05-3:25 pm
Segment 8:	Post-Test and Evaluation	3:25-4:00 pm

# Learning Objectives

## Knowledge

**K1.** Trainees 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.** Trainees will understand regional differences of California Indian history and will identify two regional historic events that resulted in historical trauma.

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

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

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

**K6.** Trainees will be able to identify engagement and teaming with Tribes as a part of the new practice model.

**K7.** Trainees 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.** Trainees will understand ICWA placement preferences and that they are important to one of ICWA's purposes.

**K9.** Trainees will recognize guardianship and Tribal Customary Adoption as concurrent planning options for American Indian and Alaska Native children.

**K10.** Trainees 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.** Trainees will recognize the legal ramifications related to non-compliance with ICWA.

## Skills

**S1.** Trainees will demonstrate awareness of culturally appropriate engagement for the purpose of identifying American Indian/Alaska Native children.

**S2.** Trainees will demonstrate the ability to change reasonable efforts into Active Efforts.

## Values

**V1.** Trainees 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.** Trainees 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.

# Lesson Plan

Segment	Methodology and Learning Objectives
<p><b>Segment 1</b> 65 min. 9:00-10:05 Getting Started</p>	<p><b>Activity 1A (25 min)</b> Group activity <i>PowerPoint slide 1-8</i> <i>Learning Objectives K6, V1</i></p> <p><b>Activity 1B (25 min)</b> Facilitated review <i>PowerPoint slides: 9-11</i> <i>Learning Objectives: K1, K3, K4, V2</i></p> <p><b>Activity 1C (5 min)</b> Facilitated review <i>PowerPoint slide: 12</i> <i>Learning Objectives: K4, K5</i></p> <p><b>Activity 1D (10 min)</b> Large group exercise <i>PowerPoint slides: 13-14</i> <i>Learning Objectives: K1-10, S1-2, V1-2</i></p>
<p><b>BREAK</b> 15 min, 10:05-10:20 am</p>	
<p><b>Segment 2</b> 30 min 10:20 am California Indians</p>	<p><b>Activity 2A (30 minutes)</b> Video <i>PowerPoint slide: 15</i> <i>Learning Objectives K1, K2, K3, K4</i></p>
<p><b>Segment 3</b> 10 min 10:50 am History, Purpose, Spirit of ICWA</p>	<p><b>Activity 3A (10 min)</b> Facilitated Review <i>PowerPoint slides:16-19</i> <i>Learning Objectives: K1, K2, K3, K6, K10, V1, V2,</i></p>
<p><b>Segment 4</b> 40 min 11:00 am Historical Trauma</p>	<p><b>Activity 4A 40 min)</b> Activity and Lecture <i>PowerPoint slides: 20-23</i> <i>Learning Objectives: K3, K6, V1, V2</i></p>
<p><b>Segment 5</b> 5 min 11:11:40 am Remedying Bias</p>	<p><b>Activity 5A (5 min)</b> Presentation <i>PowerPoint slides: 24-31</i> <i>Learning Objectives: K6, V1, V2</i></p>
<p><b>LUNCH</b> 60 minutes, 11:45-12:45</p>	

Segment	Methodology and Learning Objectives
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**Segment 6**  
**125 min**  
**12:45 pm**  
 ICWA Requirements and Social Work Practice

**Activity 6A (65 min)**  
 Video, Lecture, Activity  
*PowerPoint slides: 32-47*  
*Learning Objectives: K4, K5, K6, K11, S1*

**Activity 6B (20 min)**  
 Lecture, Activity  
*PowerPoint slides: 48-53*  
*Learning Objectives: K5, K6, K7, S2, V1, V2*

**Activity 6C (20 Min)**  
 Lecture, Activity  
*PowerPoint slides: 54-64*  
*Learning Objectives K4, K5, K6, K8, V1, V2*

BREAK
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**15 min 1:2:30-2:45**

**Activity 6D (10 min)**  
 Lecture  
*PowerPoint slides: 65-67*  
*Learning Objectives: K1, K4, K6, S1, V1*

**Activity 6E (5 min)**  
 Lecture  
*PowerPoint slides: 68-76*  
*Learning Objectives: K4, K5, K6, K9, S1, V1, V2*

**Activity 6F (5 min)**  
 Lecture  
*PowerPoint slides: 77-81*  
*Learning Objectives: K5, K6, V1, V2*

**Segment 7**  
**20 min**  
**3:05 pm**  
 What Stands Out from Today/Closing Circle

**Activity 7A (20 min)**  
 Lecture  
*PowerPoint slides: 82-90*  
*Learning Objectives: K5, K10, K11*

**Segment 8**  
**35 min**  
**3:05 pm**  
 Post Test

**Activity 8A**  
 Post Test  
*PowerPoint slide: 91*

**Activity 8A**  
 Trainee Satisfaction Surveys  
*PowerPoint slides: 92*

## Segment 1: Getting Started

<b>Segment Time:</b>	65 minutes
<b>Activity Time:</b>	ACTIVITY 1A: Welcome, Introduction Circle, Housekeeping (25 minutes) ACTIVITY 1B: Training Overview, review of eLearning, Historical Context (25 minutes) ACTIVITY 1C: ICWA Basics (5 minutes) ACTIVITY 1D: What Do WE Hope to Gain from Today? (10 minutes)
<b>Trainee Content:</b>	Agenda (page 5) Learning Objectives (page 6)
<b>Slides</b>	1-8

### Description of Activity:

If breakfast is served, it should be available for Trainees and guests when registration begins. Registration should conclude before the training start time.

Trainer introductions, cultural welcome, and housekeeping

### During the activity

#### ACTIVITY 1A: Welcome, Introduction Circle, Housekeeping

<input type="checkbox"/>	
<input type="checkbox"/>	<p><b>ICWA: Working with Native American Families and Tribes</b></p> <p>California Common Core Version 3.1   2017</p> 
<ul style="list-style-type: none"> <li><input type="checkbox"/> All the co-trainers and invited community guests should stand together and introduce themselves. Native American trainers are encouraged to introduce themselves in accordance with their own cultural protocols and in their own language if they speak it. Trainers may then ask Trainees to join them in a circle.</li> <li><input type="checkbox"/> Blessings are offered at the start of any event, before each meal served, and at the end of the event. If an appropriate Elder is not present, one of the trainers, particularly the Native American trainer, may offer the blessing or invite a co-trainer to offer one. The trainer may opt to offer a moment of silence instead of a blessing. In Native American communities, it is common</li> </ul>	<p><b>ICWA: Working with Native American Families and Tribes</b></p> <p><b>Opening Introductions Housekeeping</b></p> 

to begin meetings, events, gatherings, etc., with blessings. Children are considered to be sacred, and therefore, any work involving our children is undertaken after blessings have been offered that ask for help and guidance, and acknowledge the ancestors.

- ❑ Trainers ask the group “Who here (besides trainers) is Native American?” For those who raise their hands, trainers ask what Tribe and from where, and thank them for their presence and their work. Trainers then ask “Who here has heard you are Native American or have Native heritage?” For those who raise their hands, trainers ask what they know. After everyone has answered, trainers explain the reason we ask that question is because this is sometimes what you will hear from people during inquiry. This is an introduction to the process of working through inquiry when little information is known.
- ❑ Housekeeping announcements are made about the Agenda, including start, stop, and break times, the locations of facilities, and the quieting of telecommunication devices If group agreements are to be a part of the training, trainer should discuss them with the class.

**Why ICWA?**

“[S]hould Indian children be treated differently than other children? Given the history of Indian children in the United States and the trust relationship promised to them by the United States government, the answer is Yes.”

--Hon. Leonard Edwards  
Santa Clara Superior Court (Ret.)

- ❑ Trainer shows Learning Objectives slides and may either review all the Learning Objectives or (recommended) inform the Trainees that the Learning Objectives are in the Trainee’s Guide (page 6) and can be reviewed there.

**Learning Objectives** 

- Participants will understand the relationship between US history and ICWA and will be able to identify three events that led 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.
- Participants 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.

**Learning Objectives** 

- Participants will be able to identify five basic provisions of the Indian Child Welfare Act.
- Participants will be able to identify engagement and learning with Tribes as a part of the new practice model.
- Participants will understand the difference 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.
- Participants will understand ICWA placement preferences and that they are important to one of ICWA’s purposes.

**Learning Objectives** 

- Participants will recognize Tribal Customary Adoption and guardianship as concurrent planning options for American Indian and Alaska Native children.
- 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.
- Participants will recognize the legal ramifications related to non-compliance with ICWA.
- Participants will demonstrate and awareness of culturally appropriate engagement for the purpose of identifying American Indian/Alaska Native children.

**Learning Objectives** 

- Participants will recognize Tribal Customary Adoption and guardianship as concurrent planning options for American Indian and Alaska Native children.
- 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.
- Participants will recognize the legal ramifications related to non-compliance with ICWA.
- Participants will demonstrate and awareness of culturally appropriate engagement for the purpose of identifying American Indian/Alaska Native children.

**Transition to the next activity:** Training Overview, Review eLearning Historical Context of ICWA

## ACTIVITY 1B: Training Overview, Review eLearning Historical Context of ICWA

<b>Activity Time:</b>	25 minutes
<b>Trainee Content:</b>	Trainee’s Guide, pages 7-13
<b>Slides:</b>	9-11

**Description of Activity:** Facilitated review

- Provide a general Agenda for the day
- Review and process historical context for ICWA from eLearning

**Before the activity,** be thinking about the take- away for Trainees?

- Opportunity to process emotions that arose during the eLearning
- To be able to name examples of historical trauma and understand the relationship between Tribes and the United States
- To be able to identify events that led to the passage of ICWA

### During the activity

<ul style="list-style-type: none"> <li><input type="checkbox"/> Trainer provides an overview of the topics that will be covered throughout the day.</li> <li><input type="checkbox"/> Trainer should refer Trainees to page 8 of the Trainee’s Guide, <i>ICWA at a Glance</i>, and page 9, <i>ICWA Best Practice</i>. Both are intended to be a reference for social workers to use in the field and at their desk when ICWA questions arise.</li> </ul>	<p style="text-align: center;"><b>Training Overview</b></p> <ul style="list-style-type: none"> <li>• eLearning Review</li> <li>• ICWA Historical Context</li> <li>• ICWA Basics</li> <li>• Historical Trauma</li> <li>• Tribal Sovereignty</li> <li>• Remediating Bias</li> <li>• ICWA Requirements and Social Work Practice</li> </ul>
<ul style="list-style-type: none"> <li><input type="checkbox"/> To frame the context for where the discussion is going, read the following quote out loud: “You don’t know where you are going until you know where you came from.”</li> </ul> <p style="padding-left: 40px;">This is a cultural concept for Native American people whose cultural beliefs and identity are anchored in a relationship to place and 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. The purpose of the historical context is to show historical events that contributed to ICWA’s passage. With that understanding social workers will be able to improve their welfare practice and ensure compliance with the law.</p> <p>Facilitate a recall discussion about what was learned in the eLearning utilizing the following questions:</p> <ul style="list-style-type: none"> <li>• What do you remember from the eLearning?             <ul style="list-style-type: none"> <li>○ Did it bring up any feelings?</li> </ul> </li> <li>• What did you learn for the first time?             <ul style="list-style-type: none"> <li>○ How did you feel about what you learned?</li> <li>○ Where you surprised by anything new?</li> </ul> </li> </ul>	<p style="text-align: center;"><b>eLearning Review/ICWA Historical Context</b></p> <p>What do you remember about...</p> <ul style="list-style-type: none"> <li>• Removal</li> <li>• Boarding Schools</li> <li>• Relocation</li> <li>• Indian Adoption Project</li> </ul> <div style="display: flex; justify-content: space-around;">   </div>

<ul style="list-style-type: none"> <li>• What do you remember about Removal and Relocation? <ul style="list-style-type: none"> <li>○ What do you think the lasting impact is for Native American families?</li> </ul> </li> <li>• What do you remember about Boarding Schools? <ul style="list-style-type: none"> <li>○ What do you think the lasting impact is for Native American families?</li> </ul> </li> <li>• What was the Indian Adoption Project? <ul style="list-style-type: none"> <li>○ What is the lasting impact for Tribes?</li> </ul> </li> </ul>	
<p>❑ Trainer ask Trainees: What is the significance of the Two Apologies—what did they do?</p> <ul style="list-style-type: none"> <li>• Acknowledgement by BIA of it’s role in attempting to facilitate assimilation of native people</li> <li>• Implicit recognition of the trauma caused by their [BIA and CWLA] actions</li> </ul>	<p style="text-align: center;"><b>The Two Apologies: What is the significance?</b></p> <p><small>In 2000 Kevin Gover(Pawnee), Assistant Secretary 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.</small></p> <p><small>Mr. Shay Bilchik, Executive Director of the Child Welfare League of America, issued an in 2001 for their role in the Indian Adoption Project, stating the project was developed to remove Indian children, mostly infants, and place them in adoptive homes with non-Indian parents.</small></p>
<p>❑ Ensure the following information is conveyed:</p> <ul style="list-style-type: none"> <li>• Each historical event in the eLearning reflects the United States’ policy to assimilate American Indians into mainstream culture and is a cause of historic trauma.</li> <li>• The effects of boarding schools linger for communities and families today because they forced separation from culture, introduced physical and sexual violence, and changed parenting models.</li> <li>• Forced removals of Native child resulted in unresolved grief and loss and historic trauma in Native families.</li> </ul>	

**Trainer Foundational Information for the segment**

**Removal and Relocation**

Congress passed the Indian Removal Act in 1830. The Act authorized the relocation of all Native Americans living east of the Mississippi to the Indian Territory in Oklahoma. The Act was 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. 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 efforts through removal did not end there. In the 1950s the United States created the Indian Relocation Program, which provided relocation and job placement assistance in Chicago, Los Angeles, Salt Lake City and Denver. The intent was to remove Indians from their reservations to cities where they would be forced to assimilate. By relocating enough Indians away from their reservations, 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. The bare minimum assistance for job placement and housing was provided, and it 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. Many did not find jobs; 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<sup>9</sup>. 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.”<sup>10</sup> Many Indians returned to their reservations, but those who did not often found trouble with the law, usually resulting from drug and alcohol use. Although the BIA did not keep adequate statistics of the relocation program, it claimed that only 30% of the relocated Indians returned to reservations but critics of the program claim the number was much higher. It is estimated that over 10,000 American Indians were relocating to urban areas each year by 1968.<sup>11</sup>

Despite efforts to the contrary, a new Tribal community emerged in the cities. Through new found support networks with each other, urban Indians grew 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 Native Americans do not live on reservations. New York, Los Angeles, Phoenix, and Chicago have the highest number of American Indians<sup>12</sup>. 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.<sup>13</sup>

### **Boarding Schools**

Like removal and relocation, boarding schools were intended to facilitate assimilation. Boarding schools were located a great distance from the Tribal communities they served. Boarding schools were military-like and their philosophy was absolute immersion into Anglo-Christian culture including its language, religion, 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 from 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.

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<sup>9</sup> Ibid at 90.

<sup>10</sup> Ibid at 91.

<sup>11</sup> Ibid at 95.

<sup>12</sup> National Urban Indian Family Coalition. (2008). *Urban Indian America: The Status of American Indian and Alaska Native Children and Families Today, a report to the Annie E. Casey Foundation* at page 11.

<sup>13</sup> Ibid.

### **The Indian Adoption Project and the Two Apologies**

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<sup>14</sup>. 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<sup>15</sup>. In 2000, the Assistant Secretary on Indian Affairs, Kevin Gover (Pawnee), delivered an apology for the conduct of the Bureau of Indian Affairs and their collusion in efforts to break up Indian families. The video can be viewed on line at <https://www.youtube.com/watch?v=zu52ig696L4>. In 2001, the executive director of Child Welfare League of American issued an apology for the role it played in the Indian Adoption Project. The full text of the apology can be found at <https://splitfeathers.blogspot.com/2010/03/apology-cwla-shay-bilchik.html>.

**Transition to the next activity: ICWA Basics**

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<sup>14</sup> Coincidentally, between 1973 and 1976, more than 3000 Native American women were forcibly sterilized at Indian Health Service clinics. See: Vicenti Carpio, Myla. (2004). The Lost Generation: American Indian Women and Sterilization Abuse. *Social Justice Vol. 31, No. 4*. Pages 40-53, at page 42.

<sup>15</sup> Palmiste, Claire. (2001). “From Indian Adoption Project to Indian Child Welfare Act: the Resistance of Native American Communities.” *Indigenous Policy Journal, Volume XXII, No. 1. Summer 2011*.

## ACTIVITY 1C: ICWA Basics

<b>Activity Time:</b>	5 minutes
<b>Trainee Content:</b>	Trainee’s Guide, pages: 14
<b>Slides:</b>	12

### Description of Activity: Group Review

- ❑ Intended to be a short segment because Trainees received the information in the eLearning.
- ❑ Review the important applicable concepts of ICWA that were explained in the eLearning

### During the activity

- ❑ Questions to facilitate the discussion:
  - What is an Indian Child under ICWA?
  - Who has the authority to determine who an Indian child is?
  - At what point in the case does ICWA apply?
  - How may an Indian Tribe participate in child dependency proceedings?
- ❑ What is the take away for Trainees?
  - To know the definition of Indian child and who determines whether the child is an Indian child under the law
  - To know at what point in a dependency case ICWA applies
  - To know in general terms how a Tribe may participate in an ICWA case
- ❑ The trainer must ensure the following information is conveyed:
  - The definition of Indian child under ICWA.
  - Tribal authority to determine membership.
  - A case should be treated as an ICWA case immediately.
  - Tribe can determine how they participate in a case, including intervening, assuming jurisdiction or observing.

#### ICWA Basics

- Who is an Indian child?
- Who determines who is an Indian child?
- How may a Tribe participate in an ICWA case?
- When does ICWA apply?



### Trainer Foundational Information for the segment

**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.

**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. In order to know about a particular child, it is imperative that the Tribe be notified so that the Tribe can make a determination.

**Note: Because this curriculum targets child welfare social workers, provisions applying ICWA to non-dependency cases is not discussed. The trainer should remember, however, that ICWA may apply in juvenile delinquency cases where the offense would not be a crime if committed by an adult (truancy, minor in possession, etc.) or in proceedings where 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 and in divorce proceedings or custody disputes in which neither parent will have custody of the child. ICWA does not apply to delinquency proceedings other than those described above or to divorce proceedings if custody is granted to a parent.**

**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.

**Note for Trainer: 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 ability to hear a case at the exclusion of all other courts) the case *must* be transferred. Currently, there are no Tribes with exclusive jurisdiction in California. 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 ICWA followed.

**Transition to the next activity:** What Do We Hope to Gain from Today?

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

<b>Activity Time:</b>	10 minutes
<b>Trainee Content:</b>	Trainee's Guide, N/A
<b>Slides:</b>	13-14

**Description of Activity:** Group activity

### During the activity

<ul style="list-style-type: none"> <li>❑ The trainer will let the Trainees know that today is their day to have all of their questions answered. Trainees should be told that this is a safe space for them to have all of their questions answered, and that no question is stupid, silly, etc. Native American trainers are encouraged to let the Trainees know that this is their opportunity to ask questions of the community and to not be embarrassed of their questions.</li> <li>❑ As the Trainees ask their questions, they should be written on the page clearly and concisely. The pages should be hung around the room and reviewed at the end of the day to ensure the questions were answered. Try to avoid lengthy discussions during this activity. Instead offer brief answers and explain that details will be covered throughout the day.</li> <li>❑ Chart Trainee questions and knowledge needs             <ul style="list-style-type: none"> <li>• We will return to this to ensure all questions have been addressed</li> </ul> </li> </ul>	<p style="text-align: center;"><b>What do we hope to get out of today?</b></p> 
<ul style="list-style-type: none"> <li>❑ Keep this slide up during break and highlight the contributions being made by Native Americans.</li> </ul>	<p style="text-align: center;"><b>15-Minute Break</b></p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">  <p><small>Cmdr. John Herrington, Chickasaw Retired Naval pilot and Naval test pilot, first Native American NASA astronaut. Saw on the Space Shuttle Endeavour's 16th mission to the International Space Station.</small></p> </div> <div style="text-align: center;">  <p><small>Corey Gray, Sikaika (Northern Blackfoot) Lead operator of the laboratory that directly observed black holes for the first time; detected gravitational waves and confirmed aspects of Einstein's Theory of Relativity.</small></p> </div> </div>

### Transition to the next segment: California Indians

## Segment 2: California Indians

<b>Segment Time:</b>	30 minutes
<b>Activity Time:</b>	ACTIVITY 2A: California Indians, the Mission System, and the Gold Rush (20 min. video; 10 min. review)
<b>Trainee Content:</b>	Trainee's Guide, pages 15-16
<b>Slides:</b>	16

**Description of Activity:** Video, facilitated discussion

- ❑ Video is approximately 20 minutes long

Cue up both video links:

<https://m.youtube.com/watch?v=vUbCAM3X2HM> and <https://m.youtube.com/watch?v=hTufdMo7di8>

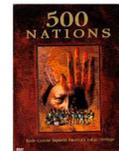
The trainer will need to stop the 2nd video when the caption "Southern Plains" appears.

### During the activity

Trainer will play the video. When video is complete, trainer will facilitate a discussion to process the information and any emotions that may have been stirred.

- ❑ Questions to facilitate the discussion:
  - What are your thoughts?
  - Is this new information or have you heard this before?
  - What stands out from the video?
  - How does this impact your social work practice?
- ❑ What is the take away for Trainees?
  - Basic knowledge of California's history relating to California Native peoples
  - To be able to name examples of historical trauma and understand the relationship between Tribes and the United States
  - To be able to identify events that led to the passage of ICWA
  - To understand regional differences of California history
  - To identify two regional historic events resulting in historic trauma
- ❑ The trainer must ensure the following information is conveyed:
  - California Tribes in the north were significantly impacted by the Gold Rush.
  - Tribes in the south were significantly impacted by the Mission System.
  - Both the Gold Rush and the Mission System are two sources of historic trauma for California Indian peoples.

#### California Indians 500 Nations: California Coast



### Transition to the next segment: History, Purpose and Spirit of ICWA

## Segment 3: History, Purpose and Spirit of ICWA

<b>Segment Time:</b>	10 minutes
<b>Activity Time:</b>	ACTIVITY 3A: The History, Purpose, and Spirit of ICWA (10 minutes)
<b>Trainee Content:</b>	Trainee’s Guide, pages: 17-20
<b>Slides:</b>	16-19

**Description of Activity:** Facilitated review

- ☐ Intended to be a short segment

### During the activity

<ul style="list-style-type: none"> <li>☐ This is to review the origins of ICWA that were explained in the eLearning</li> </ul>	<p style="text-align: center;"><b>Indian Child Welfare Act</b> History, Purpose, and Provisions</p> 
<ul style="list-style-type: none"> <li>☐ Questions to facilitate the discussion:           <ul style="list-style-type: none"> <li>• What is the relationship between the American Indian Policy Review Commission and ICWA?</li> <li>• What is the underlying reason for the shift in thinking by early commenters on how well cared for our children were to a perceived inability to care for our children? (Bias).</li> <li>• How is ICWA a remedial statute?</li> <li>• What is the Spirit of ICWA?</li> </ul> </li> </ul>	<p style="text-align: center;"><b>American Indian Policy Review Commission Findings</b></p> <ul style="list-style-type: none"> <li>• Decisions made about Indian children were biased when made by non-Indian authorities.</li> <li>• 25% to 35% of all Indian children were removed and raised at some time in non-Indian homes and institutions.</li> <li>• States failed to recognize the Tribal, social, and cultural standards prevailing in Indian communities and families.</li> </ul> <p style="text-align: center;"><b>The Indian Child Welfare Act was passed to remedy these issues!</b></p> 
<ul style="list-style-type: none"> <li>☐ What is the take-away for Trainees?           <ul style="list-style-type: none"> <li>• To understand that prior to ICWA, decisions about Indian children were negatively biased when they were made by non-Indian authorities</li> <li>• To understand that prior to ICWA more than 25% of all Indian children were removed from their homes and placed in non-Indian homes and institutions</li> <li>• That the biased decision-making led to the disproportionate number of Indian children in out of home care</li> <li>• In California, best practice is to follow the spirit of the law, as well as the letter of the law</li> </ul> </li> </ul>	<p style="text-align: center;"><b>ICWA: Purpose</b></p> <p>In adopting ICWA, Congress declared that the U.S. policy is to:</p> <ul style="list-style-type: none"> <li>• <b>Protect</b> the best interests of Indian children;</li> <li>• <b>Promote the stability and security</b> of Indian Tribes and families.</li> </ul> <p>Purpose accomplished through:</p> <ul style="list-style-type: none"> <li>• <b>Minimum federal standards</b> for the removal of Indian children from their families and their placement in foster or adoptive homes that the <b>unique values of Indian culture</b></li> <li>• Assistance to Indian Tribes for operating child and family service programs</li> </ul>

<ul style="list-style-type: none"> <li>❑ Direct Trainees to the Spirit of ICWA document on page 20 of their workbook.</li> <li>❑ The trainer must ensure the following information is conveyed: <ul style="list-style-type: none"> <li>• ICWA is a remedial act because it includes measures to prevent bias in decision-making by non-Indian authorities, prevents unwarranted removal of Indian children from the families and includes Tribes in decisions about their families.</li> <li>• Spirit of ICWA is important because a large number of non-recognized Tribes are located in California, and because better outcomes are achieved when Native children remain connected to their culture.</li> </ul> </li> </ul>	<p style="text-align: center;"><b>Spirit of ICWA</b></p> <p><small>Maintaining connections to culture and community increases protective factors. Spirit of ICWA means treating the case as an ICWA case:</small></p> <ul style="list-style-type: none"> <li>• When the child's Tribe is not a federally recognized Indian Tribe</li> <li>• When the child is a descendent of a federally recognized Tribe but is not eligible for enrollment</li> <li>• When the family is a Native American family but not a member of a Tribe</li> </ul> <p><small>California law gives a court discretion to allow non-federally recognized Tribes to participate in proceedings and make recommendations.</small></p>
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### Trainer Foundational Information for the segment

The U.S. Congress authorized the creation of the American Indian Policy Review Commission in 1975. 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 1977 (the Report) included a section regarding child custody which outlined the need for what was to become the Indian Child Welfare Act (ICWA).

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.<sup>16</sup> The Report indicates that up to the investigation of the Commission, an estimated 25–35% of all Indian children had been 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.<sup>17</sup>

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..."<sup>18</sup>

In the hearings which preceded ICWA's enactment, Congress found that Indian children are vital to the continued existence of Indian Tribes and therefore must be protected. Congress also found that an alarmingly high percentage of Indian families were broken up by the often unwarranted removal of children by public and private agencies and an alarmingly high percentage of such children were placed in non-Indian homes and institutions; and states failed to recognize the Tribal, social, and cultural standards prevailing in Indian communities and families.<sup>19</sup> The Act was passed to remedy these problems.<sup>20</sup>

<sup>16</sup> Task Force Four: Federal, State, and Tribal Jurisdiction (1976). Final Report to the American Indian Policy Review Commission. Volume 2. U.S. Government Printing Office, at page 79.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid., p. 7

<sup>19</sup> Ibid., p. 7.

<sup>20</sup> Orrantia, Rose-Margaret., (1991). The Indian Child Welfare Act, A Handbook at pages 5-6.

## Spirit of ICWA

California Indians were landless and homeless when they realized that the treaties they signed in 1851–1852 with the United States were not ratified. In the 1870s 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 formal federal recognition of those Tribal governments and federal obligations to them. Starting in the late 1970's Tribes began to fight for restoration of federal 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. 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. The Spirit of ICWA best practice 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) the family is Native American but not members of a Tribe; or (3) if the children descend from a federally recognized Tribe but are not eligible for membership.

There are a number of other things social workers can do to follow the Spirit of ICWA including: (1) identifying the Tribes and Tribal resources in your area; (2) establishing connections with local Tribes and Tribal resources regardless of federal recognition status; (3) participate in ongoing ICWA training; (4) ensure proper, thorough and ongoing inquiry in every case, ensure placements consistent with ICWA placement preferences, and engage in Active Efforts; and (5) connect the child and family with their Tribe and local Tribal resources. For more information refer to the “Following the Spirit of ICWA” handout in the Trainee workbook.

Following the Spirit of ICWA provides a number of benefits to child welfare practice, the children and the family. For example, Active Efforts are required by ICWA. If the child’s Tribe is not federally recognized but later becomes federally recognized, Active Efforts will be required. If Active Efforts are provided prior to federal recognition in accordance with ICWA, there will be less disruption for the child in placement and in services for the child and family. Additionally, even if not associated with a federally recognized Tribe, Native families can still be part of a larger Native community which serves as a strength and enhances resilience factors for Native youth. Native American agencies that serve youth regardless of a Tribe’s recognition status may provide a number of services and activities at no cost to the county. Finally, many resources available to Native Americans, such as Tribal Temporary Assistance for Needy Families (TANF) health care and Title VII Indian Education programs) do not require membership in a federally recognized tribe to qualify.

Research shows that cultural connections result in positive outcomes for Tribal youth, including resilience and self-reliance as an adult. It has also been shown to reduce the number of re-entries into dependency and public health systems.

**Transition to the next segment: Historical Trauma**

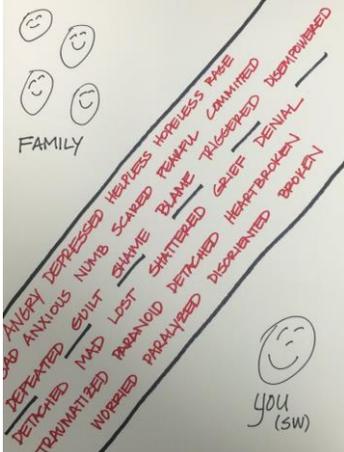
## Segment 4: Historical Trauma

<b>Segment Time:</b>	40 minutes
<b>Activity Time:</b>	ACTIVITY 4A: Effects of genocide and forced assimilation (30 minutes activity/10 minutes lecture)
<b>Trainee Content:</b>	Trainee's Guide, pages 21-23
<b>Slides:</b>	20-23

### Description of Activity: Group Activity and Lecture

- ❑ Be mindful that this segment and segments discussing historical events may have stirred strong emotions and unresolved grief and loss in Trainees. Trainers must be prepared to manage expressions of emotion and unresolved grief and loss.
- ❑ Trainer should be prepared to share a personal story to model the activity for Trainees and to set the tone of the activity.
- ❑ The trainer's goal with the activity is to create the opportunity for Trainees to experience genuine emotion.

### During the activity

<p><b>Compassion Activity</b></p> <ul style="list-style-type: none"> <li>❑ In this exercise, each Trainee will be asked to think of a time that he or she did not fit in or when the Trainee felt that he or she was not value or supported. Trainees can discuss at their tables for approximately <b>10</b> minutes. Trainers should lead by example and offer a brief, applicable personal story.</li> </ul>	<p><b>Compassion Activity</b></p> 
<ul style="list-style-type: none"> <li>❑ In the meantime, using the large piece of paper, the trainer should draw road diagonally on the paper. On the upper corner of the paper, the trainer can draw simple smiling faces and the word "family." On the lower corner, the trainer can draw a smiling face and write the word "social worker."</li> </ul> 	

<ul style="list-style-type: none"> <li>❑ The trainer will reconvene the large group and ask each person to recall when they did not fit in or received a message they were not valued. The trainer will ask each person to choose one word to describe how the situation made them feel. The trainer will write each of the words on the large paper in the area that looks like a road. Trainees may share words such as angry, lonely, sad, afraid, anxious, etc.</li> <li>❑ After each Trainee, has shared a word, the trainer should review and reiterate the strong emotions associated with them. The trainer should connect those emotions to the emotions and experience of families experiencing historical trauma. One way to make this connection is to show that the social worker’s task and challenge is to navigate the emotions (the road) to reach the family and to work effectively with them.</li> </ul>	
<ul style="list-style-type: none"> <li>❑ This exercise serves as a transition to a discussion about historical trauma. Trainer should describe what it is and draw a parallel between the emotions written on the “road” and the characteristics of unresolved grief and loss.</li> <li>❑ Intended to invoke emotion with the Trainees, specifically empathy, in order to experience the information in a deeper and more personal way.</li> </ul>	<p style="text-align: center;"><b>Historic Trauma</b></p> <ul style="list-style-type: none"> <li>• <i>Historical Trauma</i> is the collective emotional and psychological injury both over the life span and across generations, resulting from a <i>cataclysmic</i> history of genocide.</li> <li>• <i>Cultural Trauma</i> is an attack on the fabric of a society, affecting the essence of the community and its members.</li> <li>• <i>Intergenerational Trauma</i> occurs when trauma is not resolved, subsequently internalized, and passed from one generation to the next.</li> </ul>
<ul style="list-style-type: none"> <li>❑ Before moving on to the third and final slide of historic trauma, the trainer can engage Trainees in a skill-building exercise. The trainer can ask social workers what they think they would see in a family experiencing unresolved grief and loss.</li> </ul>	<p style="text-align: center;"><b>Historic Trauma (cont'd)</b></p> <p>Characteristics of unresolved grief and loss:</p> <ul style="list-style-type: none"> <li>• being quick to anger</li> <li>• low self-esteem/shame of identity</li> <li>• history of depression</li> <li>• shame about loss of culture</li> <li>• suicidal ideation</li> <li>• substance abuse</li> <li>• violence</li> </ul> 
<ul style="list-style-type: none"> <li>❑ Review the slide following their responses</li> </ul>	<p style="text-align: center;"><b>Historic Trauma: What a Social Worker May See</b></p> <ul style="list-style-type: none"> <li>• Lack of parenting skills</li> <li>• Emotional remoteness and “going through the motions” of the process</li> <li>• Apathy and resistance toward following through with case plans or contacting other government agencies</li> <li>• Parents may “disappear”</li> </ul>
<ul style="list-style-type: none"> <li>❑ What is the take-away for Trainees? <ul style="list-style-type: none"> <li>• To better understand Native Americans’ response to government agencies, their representatives and to legal processes.</li> <li>• To better understand and appreciate the importance of engagement and teaming with Tribes and families.</li> </ul> </li> <li>❑ The trainer must ensure the following information is conveyed: <ul style="list-style-type: none"> <li>• U.S. policies towards its Native peoples are directly linked to historic trauma and unresolved grief and loss.</li> <li>• Contemporary traumas compound unresolved grief and loss, which manifests in a number of ways that threaten the stability of the family and the success of parents/Indian custodians in addressing protective issues.</li> </ul> </li> </ul>	

<ul style="list-style-type: none"> <li>• ICWA was passed to ensure that the unwarranted breakup of Indian families and the illegal and unwarranted removal of Indian would not occur.</li> <li>• The historic trauma is what specifically is addressed by Active Efforts and why Active Efforts are so important to ICWA compliance and engaging with Tribal families.</li> </ul>	
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**Trainer Foundational Information for the segment**

In order to understand the threats to Native American family unity, it is helpful to understand the underlying reasons why many Native American individuals are not faring well in terms of emotional, physical and spiritual health<sup>21</sup>. Dr. Maria Yellow Horse Brave Heart, Hunkpapa/Lakota, developed a theory of historical trauma and unresolved grief and loss for Native Americans and other indigenous peoples.<sup>22</sup> *Historical trauma*, as defined by Dr. Yellow Horse Braveheart, is the collective emotional and psychological injury both over the life span and across generations, resulting from a cataclysmic history of genocide. Related to historical trauma are cultural trauma and intergenerational trauma. *Cultural Trauma* is an attack on the fabric of society, affecting the very essence of the community and its members. *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: rape, murder and kidnapping; forcible removal from homelands; large scale loss of land by those who were not removed; loss of access to traditional foods and medicines; forcible separation from languages and culture; and prohibitions against spiritual practices. As a result of the cultural trauma, traditional parenting skills were lost or impaired; kinship bonds were broken, a sense of identity and belonging was lost and traditional gender roles and knowledge were compromised. The pain of these losses was compounded by the continued devaluation of American Indian peoples and failure to acknowledge the grief and loss by dominant culture. The prohibition of spiritual practices prevented or limited grieving in culturally appropriate manner. This led to unresolved grief and loss across a number of generations.

Survivors of cultural trauma also experience contemporary traumas such as: being a victim of violent crime; death of a young person or a group of young people by suicide; loss of family members and friends from health issues relating to substance abuse or diabetes; loss of family members resulting from DUI car accidents; domestic violence, sexual assault, commercial sexual exploitation (personal or a loved one); or other circumstances that result in personal loss<sup>23</sup>. These compounded traumas and inability to mourn also result in unresolved grief and loss, which 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

<sup>21</sup> <http://hsc.unm.edu/programs/nmcares/docs/story-heart.pdf> accessed June 23, 2016.

<sup>22</sup> <http://aianhealthcareers.org/page7/page58/page95/page95.html> accessed June 23, 2016.

<sup>23</sup> According to a 2014 Indian Health Service Report, young people aged 15-34 years comprised 64% of the total suicides in Indian Country (see <http://www.medpagetoday.com/psychiatry/depression/53941>, accessed June 24, 2016), while American Indians in general have a suicide rate 62% higher than the general population. (See Dr. Dolores Subia Bigfoot, “History of Victimization in Native Communities” (2000). According to the National Congress of American Indians, Native Americans die at higher rates than other Americans from alcoholism (510%); diabetes (189%); and car crashes (229%). (See <http://www.ncai.org/about-tribes/demographics>, accessed June 22, 2016). Native Americans experience violent crime at a rate 2.5% higher than the general population and Native American women are victims of domestic violence at a rate of 50% more than those of non-Native women. (See [https://www.justice.gov/sites/default/files/otj/docs/american\\_indians\\_and\\_crime.pdf](https://www.justice.gov/sites/default/files/otj/docs/american_indians_and_crime.pdf), accessed June 22, 2016).

- Violence
- Victim identity
- Preoccupation with thoughts of the ancestors lost
- Focus on ancestors' suffering
- Yearning for traditional lands, cultural practices and languages<sup>24</sup>

It may also manifest in emotional remoteness (going through the motions), apathy and resistance toward following through with case plans, contacting services providers, or engaging with government agencies. It is through these manifestations that unresolved grief and loss is internalized and then passed to the next generation.

For most Native American communities, children are viewed as sacred beings and are the responsibility of the entire family and community to care for. Children are vital to the future of the Tribe—so much so that some Tribal governments include a youth council that allows youth a voice in matters of Tribal governance or have youth groups intended to develop leadership and a sense of community belonging. 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<sup>25</sup>.

Some have said that events that occurred several generations ago have little or no bearing on current situations, and wonder “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. Native American identity is inextricably rooted in a sense of connection to place, to relatives and ancestors, to cultural history and tradition, and to a higher power. Native people hold a continued desire to live according to their traditions and cultural teachings and to remain connected to their cultural identity. 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—children—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.

**Transition to the next segment: Remedying Bias through Recognized Contributions**

<sup>24</sup> Yellow Horse Brave Heart PhD, Maria, & Chase PhD, MSW, Josephine A., *Historic Trauma Informed Clinical Intervention Research and Practice* [PowerPoint slides 30-46]. Retrieved from <http://www.aihec.org/our-stories/docs/BehavioralHealth/HistoricalTraumaInformedClinicalInterventionResearchPractice.pdf>.

<sup>25</sup> Hickie, Katie, & June, Liz. Native American Disproportionality in the Child Welfare System [PowerPoint slide 5]. Retrieved from [http://newscenter.sdsu.edu/education/csp/files/04541-FY\\_Disproportionality\\_Native\\_Amer.pdf](http://newscenter.sdsu.edu/education/csp/files/04541-FY_Disproportionality_Native_Amer.pdf)



## Segment 5: Remediating Bias through Recognized Contributions

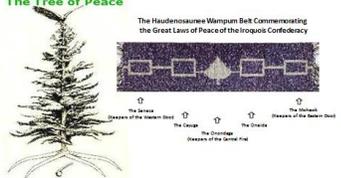
<b>Segment Time:</b>	5 minutes
<b>Activity Time:</b>	ACTIVITY 5A: Contributions Presentation (5 minutes)
<b>Trainee Content:</b>	Trainee’s Guide, pages N/A
<b>Slides:</b>	24-30

**Description of Activity:** Presentation

- ❑ The presentation will help shift energy in the room to a more positive one before breaking for lunch
- ❑ If Trainees begin to ask questions and want more information, please encourage them to do their own research.

### During the activity

<ul style="list-style-type: none"> <li>❑ What is the take-away for Trainees?             <ul style="list-style-type: none"> <li>• Native Americans have contributed a great deal to contemporary society</li> <li>• Native Americans have obtained a number of great achievements</li> <li>• Stereotypes and biases about Native Americans must be reexamined</li> </ul> </li> <li>❑ Introduce this segment by sharing the following information with Trainees:             <ul style="list-style-type: none"> <li>• The purpose of the presentation is to remedy bias by showing positive contributions to contemporary society from Native peoples and to show contemporary American Indians in an effort to break down stereotypes.</li> <li>• Positive information and images of Native Americans counters negative bias and improves the ability to engage with individual Native people and enhances the willingness to team with tribes.</li> <li>• The value of keeping children connected to culture is enhanced by sharing who the heroes are for Native America.</li> <li>• Summarize each of the contributions made.</li> </ul> </li> </ul>	<p style="text-align: center;"><b>Contributions</b></p> <p style="text-align: center;">What have American Indian/Alaska Natives contributed to contemporary society?</p> 
<ul style="list-style-type: none"> <li>❑ <u>Agriculture and Pharmacopeia:</u> <ul style="list-style-type: none"> <li>• American Indians were inextricably bound to their environment.</li> <li>• American Indians are known for introducing and cultivating a number of plants and medicines.</li> <li>• For example, American Indians of many Tribes grew the “three sisters”; corn, beans and squash.</li> <li>• They grew these plants together: the corn provided a support for the beans to grown on, the beans stabilized the corn roots and added nitrogen to the soil, while the squash held moisture in the ground to support all three.</li> <li>• When eaten together, the “three sisters” form a complete protein.</li> <li>• Other “new world” foods cultivated by American Indians include, chili peppers, avocados, tomatoes, vanilla, various nuts and seeds and cacao.</li> <li>• The Maya developed the method to process cacao and the drink was enjoyed mostly by nobility.</li> </ul> </li> </ul>	<p style="text-align: center;"><b>Agriculture</b></p> <p>Corn, Beans, Squash: The Three Sisters</p> 

<ul style="list-style-type: none"> <li>Plants like sage, tobacco, white willow (aspirin), Echinacea, coca leaves have medicinal properties that are still utilized today.</li> </ul>	<p style="text-align: center;"><b>Pharmacopeia</b></p> <p style="text-align: center;">Products Used as Medicine From The "New World" Cultivated by American Indians</p> 
<p><b>Code Talkers:</b></p> <ul style="list-style-type: none"> <li>The Code Talking program began in World War I Choctaw soldiers.</li> <li>Note that during WWI, most Native Americans were not citizens of the United States and Native children were still being sent to boarding schools where their languages and cultural practices were forbidden.</li> <li>In 1918, the Germans were able to intercept American messages and break the codes being used at the time.</li> <li>A commander overheard two Choctaw soldiers speaking their Native language, and developed a plan to use them in developing a new military code.</li> <li>Choctaw soldiers were sent to a number of posts in the field where they successfully tested the use of their language as code.</li> <li>They played a major role in successful campaigns against the Germans.</li> <li>After World War II began, a number of other Native Americans were recruited to become Code Talkers including Assiniboine, Tlingit, Comanche, Crow, Pawnee, Hopi and, most famously, Navajo.</li> <li>Navajo Code Talkers were officially recognized for their service by President Ronald Reagan in 1982.</li> <li>All other Code Talkers were awarded Congressional Medals of Honor for their service in 2008.<sup>26</sup></li> </ul>	<p style="text-align: center;"><b>Code Talkers</b></p> 
<p><b>Law, Policy:</b></p> <ul style="list-style-type: none"> <li>The U.S. Constitution: is based on the Great Law of Peace of the Six Nations Confederacy of the Iroquois League (Mohawk, Oneida, Seneca, Cayuga, Onondaga)</li> <li>The Great Laws of Peace are codified in the Wampum Belt that represents all of the nations of the Iroquois confederacy.</li> </ul>	<p style="text-align: center;"><b>Law and Policy</b></p> <p style="text-align: center;"><b>The Tree of Peace</b></p> 
<p><b>Diane Humetewa</b>, Hopi. Judge Humetewa was the first Native American woman to be appointed to the federal bench. She was appointed in 2014 to the U.S. District Court in Arizona by President Obama.</p> <p><b>Sunshine Sykes</b>, Navajo. Judge Sykes is the first Native American to be appointed to the Riverside Superior court. She was appointed in 2015 by Governor Jerry Brown.</p> <p><b>The Honorable Abby Abinanti</b> (Yurok) was the first California Indian admitted to the California State Bar and one of very few attorneys practicing Tribal child welfare law prior to the 1978 enactment of the Indian Child Welfare Act. Judge Abinanti served as a California Superior Court</p>	<p style="text-align: center;"><b>Judicial</b></p>  <p>The Honorable Diane Humetewa (Hopi) U.S. District Court for the District of Arizona May 14, 2014 - Present</p> <p>The Honorable Abby Abinanti (Yurok) First California Native admitted to California Bar Superior Court of California - San Francisco Unified Family Court (retired) Chief Justice, Tuleh Tribal Court (2007 - Present)</p> <p>The Honorable Sunshine Sykes (Navajo) Riverside County Superior Court December 2015 - Present</p>

<sup>26</sup> [www.history.com/news/world-war-is-native-american-code-talkers](http://www.history.com/news/world-war-is-native-american-code-talkers).

<p>Commissioner in the San Francisco Unified Family Court for 18 years, retiring in 2011. She has served as Chief Judge for the Yurok Tribal Court since 2007. She has also served as a judge for the Hoopa Valley Indian Reservation (1983-1986), Shoshone-Bannock Tribal Court (1985), Hopi Tribal Court (1986), and Colorado River Indian Tribe (1994). She also currently serves as a member of National Child Welfare Resource Center on Tribes (NRC4Tribes) National Advisory Council and speaks and trains widely on a variety of issues focusing primarily on Tribal courts, the Indian Child Welfare Act, and topics related to child, family and community well-being.</p>	
<p><b>Social Work:</b> In recent decades a great deal of groundbreaking work has been done on the subject of historical trauma. Two Native American women have been leaders in this field, Maria Yellow Horse Braveheart and Dolores Subia Bigfoot.</p> <ul style="list-style-type: none"> <li>❑ Dr. <b>Brave Heart</b> (Hunkpapa Oglala Lakota) earned her Master’s Degree in social work in 1976 from Columbia University and earned her Ph.D. in 1995 from Smith College. She is internationally recognized for developing a theory of Native American historical trauma and unresolved grief, and related interventions.</li> <li>❑ Dr. <b>Dolores Subia Bigfoot</b> is a member of the Caddo Nation of Oklahoma who earned her B.S. in Psychology from Southwestern University in 1980, her Ph.D. in counseling psychology from the University of Oklahoma in 1989 and completed a post-doctoral fellowship in the Department of Pediatrics, University of Oklahoma Health Sciences Center. She is known for her efforts to include Native American spiritual and traditional practices in teaching and provides consultation, training, and technical assistance to Tribal, state, and federal agencies on child maltreatment, child trauma, and cultural and traditional practices.</li> </ul>	<p style="text-align: center;"><b>Social Work</b> Historical Trauma</p> <div style="display: flex; justify-content: space-around;">   </div> <p style="font-size: small; text-align: center;"> <span style="display: inline-block; width: 45%; text-align: left;">Maria Yellowhorse Braveheart, Ph.D. (Hunkpapa, Oglala Lakota)</span> <span style="display: inline-block; width: 45%; text-align: left;">Dolores (Dee) Subia Bigfoot, Ph.D. (Caddo Nation of Oklahoma)</span> </p>

**Transition to the next segment:** ICWA Requirements and Social Work Practice

## Segment 6: ICWA Requirements and Social Work Practice

<b>Segment Time:</b>	125 minutes
<b>Activity Time:</b>	ACTIVITY 6A: Inquiry and Notice: 50 minutes (12-minute video/8-minute lecture/45-minute activity) ACTIVITY 6B: Active Efforts (20minutes) ACTIVITY 6C: Placement (20 minutes) ACTIVITY 6D: Tribal Sovereignty (10 minutes) ACTIVITY 6E: Concurrent Planning (5 minutes) ACTIVITY 6F: Qualified Expert Witness (5 minutes )
<b>Trainee Content:</b>	Trainee’s Guide, Pages: 24-65
<b>Slides:</b>	32-47

### Description of Activity: Lecture, Video and Group Activity

- ❑ Convey concepts, not details
- ❑ Intended to familiarize social workers to forms and process, not create expertise
- ❑ FACES video (available at <https://www.youtube.com/watch?v=BIQG65KFKGjs>, video is approximately 12 minutes long

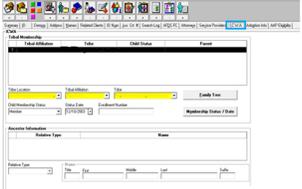
### Before the activity, be thinking of how to integrate the following into the facilitated discussion:

- ❑ What is the take away for Trainees?
  - Understanding of Inquiry and Notice requirements
  - Familiarity with how to conduct Inquiry and provide notice
  - Hands-on practice for a simple Inquiry
  - Introduction to forms
- ❑ The trainer must ensure the following information is conveyed:
  - The trainer will review with Trainees the concept of cultural humility and engaging with Indian families.
  - Many children who are eligible for the protection of the ICWA do not **appear** to be Indian; many Native children are of mixed racial heritage and, in the Southwest, many Indian families have Spanish last names.
  - Faulty Notice is the primary reason for the majority of appeals in California. Appeals are wasted resources and delayed permanency for the child. Faulty Notice often results from preventable mistakes such as: incorrect spelling, incorrect names and birthdates, blank sections of the forms. Check to make sure information is accurate.
  - The responsibility for gathering information and completing the ICWA 030 form lies with the Agency and the social worker is strongly encouraged to follow up to ensure the forms are completed even if noticing is done by someone else.
  - The social worker is not expected to become a genealogist, but will sometimes have to make greater effort to identify the child’s Tribe. It is important for the social worker to thoroughly document the effort and provide the information to the Tribe and to the court.
  - Emphasize best practice is completing every section of court forms (010, 030) and the CMS/CWS.
  - Refer Trainees to “Reasons Why Some People Do Not Claim Indian Heritage” in their workbooks.

## ACTIVITY 6A: Inquiry and Notice

During the activity	
<ul style="list-style-type: none"> <li>❑ Trainer will show the FACES video (available at <a href="https://www.youtube.com/watch?v=BIQG65KFKGJs">https://www.youtube.com/watch?v=BIQG65KFKGJs</a>)</li> <li>❑ <a href="#">Provide the following introduction to the video:</a></li> </ul> <p>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 California. 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, thorough and ongoing inquiry must be made to ensure every Indian child in dependency is identified.</p>	<p><b>ICWA Requirements and Social Work Practice</b></p> 
<ul style="list-style-type: none"> <li>❑ Let Trainees know that we will spend some time covering the Five Provisions of ICWA starting with Inquiry &amp; Notice</li> </ul>	<p><b>ICWA's Five Provisions</b></p> <ul style="list-style-type: none"> <li>• Inquiry &amp; Notice</li> <li>• Active Efforts</li> <li>• Placement</li> <li>• Concurrent Planning</li> <li>• Qualified Expert Witness</li> </ul>
<ul style="list-style-type: none"> <li>❑ Many children who are eligible for ICWA protection do not appear to be Indian. Many are of mixed racial heritage. 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.</li> </ul>	<p><b>Inquiry</b></p> <p>Anyone seeking foster care placement, guardianship, Tribal customary adoption or adoption has an <i>ongoing duty</i> to inquire about whether a child is an Indian child.</p> <p>Ask if the child may be of American Indian heritage:</p> <ul style="list-style-type: none"> <li>• At initial intake</li> <li>• If the child is being placed in foster care</li> <li>• If the child's permanent plan is adoption</li> </ul>  
<p>Reason to know exists when:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• The residence or domicile of the child, parents, or Indian custodian is in a predominantly Indian community;</li> <li>• The child or family has received Tribal services or benefits or federal services available to Indians.</li> </ul>	<p><b>Inquiry (cont'd)</b></p> <p>Anyone seeking foster care placement, guardianship, Tribal customary adoption or adoption must seek additional information when <i>reason to know</i> exists that the child is an Indian child.</p> <p><i>Reason to know</i> exists when:</p> <ul style="list-style-type: none"> <li>• Any participant in the proceeding (including the child) or Officer of the Court, Indian Tribe, organization, or agency states the child is an Indian child or has information indicating the child is an Indian child.</li> <li>• The residence or domicile of the child, parents or Indian custodian is on a reservation, or in an Alaska Native village.</li> <li>• The child is or has been a ward of a Tribal Court.</li> <li>• Either parent or child has an identification court indicating membership in a Tribe.</li> </ul>

<ul style="list-style-type: none"> <li>❑ <b>Best practice tip:</b> Presume the child is an Indian child unless and until information is discovered that indicates otherwise.</li> <li>❑ 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 includes: 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.</li> </ul>	<p style="text-align: center;"><b>Best Practice</b></p> <p style="text-align: center;">Presume the child is an Indian child unless and until information is discovered that indicates otherwise.</p> 
<ul style="list-style-type: none"> <li>❑ 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), and as much information as possible. A listing of federally recognized Tribes and their designated ICWA agents are periodically published in the Federal Register.</li> <li>❑ The court, social services, probation, and any party seeking foster care placement, guardianship, or adoption (including Tribal customary adoption (the petitioner) all have an <u>ongoing duty</u> to inquire about whether a child is an Indian child. If there is <u>reason to know</u> 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.</li> <li>❑ When inquiry is made, the following questions should be asked:       <ol style="list-style-type: none"> <li>1. Is the child a member of an Indian Tribe or eligible for membership? If the answer is yes, ask for the name of the Tribe and any other name by which the Tribe may be known; the child’s enrollment number (if available) and contact information for the Tribe (if available).</li> <li>2. Names (aliases, former names, maiden names) for parents, grandparents, great-grandparents and Indian custodians.</li> <li>3. Names of Tribes, enrollment information and contact information</li> <li>4. Any other identifying information</li> <li>5. Refer to ICWA 030 form for questions to ask</li> </ol> </li> </ul> <p><b>Note: If inquiry is made and the answer is “I don’t know” it is important for the social worker to thoroughly document that inquiry was made, who and what was asked, when and the answer.</b></p>	<p style="text-align: center;"><b>Inquiry: Who/What to Ask</b></p> <ul style="list-style-type: none"> <li>• Anyone who reasonably could be expected to have information regarding the child’s membership or eligibility; parents, Indian custodian, extended family, child, Tribe, etc.</li> <li>• Is the child a member of an Indian Tribe or may be eligible for membership and name(s) of Tribe(s), enrollment numbers, contact information</li> <li>• Questions from ICWA 030 form</li> </ul> 

<p>❑ <b>Best practice tip:</b> 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<sup>27</sup>. Document the information clearly in the files.</p>	<p style="text-align: center;"><b>Best Practice: Inquiry</b></p> <p>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.</p>  <p style="text-align: right; font-size: small;">The Greater Family (ShagbarkHickory, Platanus &amp; Prunus) © iStockphoto.com, The Greater Family</p> <p style="text-align: right; font-size: x-small;">38</p>
<p>❑ The trainer will show the slide with the CWS/CMS screen. The trainer will tell Trainees that this screen onto which Inquiry information must be entered. All fields should be completed and if the social worker has any questions, they are encouraged to work closely with their supervisor.</p>	<p style="text-align: center;"><b>Inquiry</b></p>  <p style="text-align: right; font-size: x-small;">39</p>
<p>❑ Discuss with Trainees the reasons why people don't claim Indian Heritage</p>	<p style="text-align: center;"><b>Inquiry Resources</b></p> <ul style="list-style-type: none"> <li>• "Reasons Why People Don't Claim Indian Heritage" Participant's Workbook and on Judicial Council website.</li> <li>• Genogram or family tree</li> <li>• The child's Tribe or Tribes</li> <li>• ICWA 030 form</li> </ul>  <p style="text-align: right; font-size: x-small;">40</p>
<p>❑ Summarize by reviewing this slide</p>	<p style="text-align: center;"><b>Inquiry at a Glance</b></p> <ul style="list-style-type: none"> <li>• Disproportionality cannot be reduced if we do not identify each Indian child in our care.</li> <li>• It's better to state rather than ask "If you are American Indian/Alaska Native there may additional services available to you."</li> <li>• Continue to ask throughout the life of the case.</li> </ul>  <p style="text-align: right; font-size: x-small;">41</p>
<p><b>NOTICE</b></p> <p>❑ Like Inquiry, Notice is critical to ensuring ICWA compliance. Notice allows a Tribe to determine whether a child is an Indian child, 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.</p> <p>❑ In California, the primary reason cases are appealed is because of improper noticing. These appeals represent wasted resources for your Agency in terms of the financial cost of the appeals process and the time and personnel devoted to the appeal and in some cases, permanency for the child is delayed.</p>	<p style="text-align: center;"><b>Notice: Its Importance</b></p> <ul style="list-style-type: none"> <li>• Allows a Tribe to determine whether a child is an Indian child</li> <li>• Advises the Tribe of the pending proceedings and ensures the Tribe an opportunity to assume jurisdiction or intervene in the proceedings</li> <li>• Without notice to the Tribe, the intent and underlying policy of ICWA are undermined.</li> </ul> <p style="text-align: right; font-size: x-small;">42</p>

<sup>27</sup> Orrantia, Rose-Margaret., (1991). The Indian Child Welfare Act, A Handbook. Pages 70-78.

<ul style="list-style-type: none"> <li>❑ 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 your efforts with regard to each.</li> </ul>	
<ul style="list-style-type: none"> <li>❑ The party seeking foster care or termination of parental rights must provide 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.</li> </ul>	<p><b>Notice: Who Receives What</b></p> <p>Notice must be provided when there is reason to know a child is or may be an Indian child.</p> <ul style="list-style-type: none"> <li>• Sent to parent, guardian, Indian custodian; all Tribes to which the child is a member or eligible for membership (see Federal Register and CDSS listing); Bureau of Indian Affairs (Sacramento, CA) and Secretary of the Interior, Washington, D.C.</li> <li>• Includes a copy of the petition (including, as a matter of practice, completed ICWA 010 form) and completed ICWA 030 form</li> </ul> 
<ul style="list-style-type: none"> <li>❑ Notice <i>must</i> be sent on the Judicial Council form “ICWA-030” and all of the information required by the form <i>must be</i> included if it is reasonably available to the social worker. It is important to remember that the responsibility for gathering the information and completing the ICWA 030 lies with the Agency, and it is strongly encouraged that the social worker follow up to ensure the form has been completed even if noticing is done by someone else.</li> <li>❑ Notice is provided by registered mail with return receipt requested. Notice must include the following information:       <ol style="list-style-type: none"> <li>1. A copy of the petition</li> <li>2. Completed ICWA 030 form, which includes hearing information (Section 2); Statement of rights (Section 4); Statement of confidentiality (Section 4g) and information on the child and relatives, unless disclosure presents a risk of harm</li> </ol> </li> </ul>	<p><b>Notice</b></p> <ul style="list-style-type: none"> <li>• Sent registered or certified mail, return receipt requested</li> <li>• Must be received at least 10 days prior to the hearing (except for detention hearings)</li> <li>• Must be sent again if information is received that was not previously provided</li> </ul> 
<ul style="list-style-type: none"> <li>❑ Best practice: Complete every section of the form. If, after asking, you are unable to obtain information, write “information unavailable on the form.”</li> </ul>	<p><b>Best Practice</b></p> <p>Complete every section of the ICWA 030 form. If, after asking, you are unable to obtain information, write “information unavailable” on the form.</p> 
<ul style="list-style-type: none"> <li>❑ Notice must be provided when there is reason to know an Indian child is involved in the proceedings. Notice must be received ten days prior to the hearing except if the hearing is a detention hearing. In that case, it must be given as soon as possible after filing the petition. If the 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.</li> <li>❑ 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.</li> </ul>	<p><b>Notice at a Glance</b></p> <ul style="list-style-type: none"> <li>• Required when there is reason to know an Indian child is involved</li> <li>• Must notice all Tribes in which a child is a member or may be eligible for membership</li> </ul> 

## **INQUIRY AND NOTICE SKILL BUILDING ACTIVITY**

- ❑ Introduce the activity: Emphasize that Inquiry and Notice are **critical** to ICWA compliance.
  - Inquiry is the process of determining whether a child is a member of a Tribe or eligible for membership (identifying an Indian child).
  - Notice is the process of (1) asking a Tribe whether a child is a member or eligible for membership and (2) informing the Tribe of upcoming dependency proceedings.
- ❑ This activity will familiarize you with the Inquiry and Notice process.
- ❑ Trainer will provide copies of the Federal Register listing of designated ICWA agents to Trainees.
- ❑ Trainees' workbooks contain blank ICWA 010 and ICWA 030 forms; Trainer's guide does not contain those forms for formatting and space concerns. These forms can be downloaded from the Judicial Council website.
- ❑ An "Additional Information" page is included.
- ❑ Trainer will reconvene the Trainees to complete Part 3 of the exercise.
- ❑ Familiarize yourself with the scenario in the Trainee guide

The trainer will re-convene to facilitate a larger group report out of the following questions:

**Part 1:** Ask Trainees to read the scenario and at their table groups and respond to the question "A" in their workbook: to

Determine if you have reason to know if the child is an Indian child, and if so, what is it? Answer the question: A. Reason to know is the Native art around the home and the aunt's statement that the father mentioned a Tribe.

B. Using all of the information they have been given, engage in a brief inquiry process with a partner to determine if Jack is a member of a Tribe.

*Refer them to the ICWA 010 form, ICWA 030 form and the "Additional Information" pages to use with their role play*

*With a partner at your table, engage in the Inquiry process to gather the information needed in order to determine whether Jack is a member of an Indian Tribe or eligible for membership, and if so, identify the Tribe.*

Highlight for the Trainees the following prompts for their role play; they will be part of the large group debrief:

- *How would you engage the family in this process?*
- *What questions would you ask to get the information you need and who would you ask?*
- *Be creative and remember that the Inquiry process is not just about asking questions on a list—you are also building a relationship with the family. **Part 2:** Ask Trainees to refer to the ICWA 030 Form, "Additional Information" page and the Federal Register of Designated ICWA Agents provided*

### **Skill-Building Activity: Inquiry and Notice**



In the time allocated, have them complete as much of section **Section 3, Sections 5 (c), 5 (d), 5(e) and Section 7** of ICWA 030 as possible. **FOR THIS EXERCISE ONLY**, you may write N/A where the information is not available.

**Part 3:** Facilitate the larger group discussion using the following prompts:

1. *What was your reason to know Jack is or may be an Indian child?*  
**Native art around the home and the aunt’s statement that the father mentioned a Tribe.**
2. *Who would you talk to in order to complete further inquiry?* **Grandma in the home; extended relatives; the Tribe(s); longtime family friend**
3. *What Tribes should be Noticed?* **Blackfeet Nation and Crow Nation**
4. *What questions would you ask in order to engage the family and obtain information?* **Anything they share is applicable.**  
Trainer remind Trainees that they should begin their inquiry by stating: “If you are Native American additional services may be available for you and your family.”
5. *If you did not have the information requested on the ICWA 030, what do you do?* **Do not leave anything blank, instead write “information not available” and clearly document in the case notes all the questions that were asked and who was asked.**

For a deeper dive, ask Trainees the following questions:

- *How would you engage the family in this process?*
- *What questions would you ask to get the information you need and who would you ask?*
- *Be creative and remember that the Inquiry process is not just about asking questions on a list—you are also building a relationship with the family. Examples of engagement: “I like the buffalo statue. Where did it come from? Does it have significance to your family?” Or “Who in your family keeps track of the family tree? Is there someone in your family who is the family historian who I could talk with?”* Trainer may offer suggestions about how to make Inquiry.

**Transition to the next activity:** Active Efforts

## Activity 6B: Active Efforts

<b>Activity Time:</b>	20 minutes (15 minute lecture/15 minute activity)
<b>Trainee Content:</b>	Trainee’s Guide, pages 66-69
<b>Slides:</b>	48-53

**Description of Activity:** Lecture and group activity

**Before the Activity,** be thinking of how to integrate the following into the facilitated discussion:

- ❑ What is the take-away for Trainees?
  - Active Efforts begin immediately when there is reason to know an Indian child is involved—especially PRIOR to removal
  - Active Efforts is the heart of the remedial aspect of ICWA: Active Efforts are intended to prevent the unwarranted breakup of the Indian family
  - That Active Efforts are best practice for all families
  
- ❑ The trainer must ensure the following information is conveyed:
  - Encourage Trainees to review Active Efforts information in their workbook.
  - Before removing a child, Active Efforts must have been made to prevent removal and those efforts must have been unsuccessful.
  - Active Efforts extend beyond the case plan. For example, Cal ICWA requires Active Efforts to be made to place a child with a family committed to ensuring the child is able to visit extended family and participate in the Tribe’s cultural and ceremonial events.
  - Stress the importance of engagement and teaming with Tribal social workers to ensure Active Efforts are provided
  - Active Efforts are not intended to create co-dependency with the family, but rather to create trust in the Agency and process and to help the parents/custodian develop confidence.

### During the activity

- ❑ 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.

#### 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.



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<ul style="list-style-type: none"> <li>❑ According to federal regulations, Active Efforts are affirmative, thorough, and timely efforts intended to maintain or reunite an Indian child with his or her family.</li> <li>❑ Active Efforts are more than reasonable efforts and are determined by the circumstances of each case.</li> <li>❑ Active Efforts are intended to address the issues that place the family at risk, and that are potentially the basis for child dependency proceedings.</li> <li>❑ Reasonable efforts entail a family engaging in recommended services utilizing their own resources. In contrast, Active Efforts is a process through which a social worker collaborates with the family to ensure access to services and resources that support meeting case plan objectives. <ul style="list-style-type: none"> <li>○ The process helps build trust between the social worker and the family, and builds confidence in the Indian parents that they are capable of addressing the protective issues and are empowered to take responsibility for them.</li> </ul> </li> </ul>	<p><b>What Are Active Efforts?</b></p> <ul style="list-style-type: none"> <li>• Affirmative, thorough, active and timely efforts intended to maintain or reunite an Indian child with his or her family.</li> <li>• Should be conducted in partnership with the Indian child, the child’s parents, extended family, Indian custodians, and the Tribe.</li> <li>• Should be provided to the maximum extent possible in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child’s Tribe.</li> </ul> <p><b>What Are Active Efforts?</b> <i>(cont’d)</i></p> <ul style="list-style-type: none"> <li>• Must involve assisting the parent(s) or Indian custodian through the steps of a case plan.</li> <li>• Must involve the parent(s) or Indian custodian with developing or accessing the resources necessary to satisfy the case plan.</li> <li>• Tailored to the facts and circumstances of the case.</li> </ul>
<ul style="list-style-type: none"> <li>• With regard to services, culturally appropriate services should be identified and available wherever possible and should be inclusive of resources available through the Tribe, extended family, or community.</li> <li>• Social workers are encouraged to give Indian parents choices where possible and appropriate about their services rather than make decisions for them. <ul style="list-style-type: none"> <li>○ For example, if a reunification plan includes parenting education, the social worker may ask the parents if they would be interested in taking a Native American parenting class available through a Tribal social services program, rather than assume that to be the case.</li> <li>○ Another example may be to ask the parent whether they are interested in working with a Native American therapist for individual therapy, rather than assuming that is the case. In giving parents these kinds of choices, the social worker is encouraging their participation and “buy in.”</li> </ul> </li> <li>• In determining what constitutes Active Efforts, there are a few things to keep in mind: <ul style="list-style-type: none"> <li>○ Often transportation is an issue for Native American parents, sometimes because they don’t have money for gas, sometimes because of the distance to access appropriate services, and sometimes because the parent(s) are not able to drive as a result of DUIs. <ul style="list-style-type: none"> <li>▪ Driving a parent to an appointment or arranging for transportation with the Tribal social worker is an active effort under ICWA.</li> </ul> </li> </ul> </li> </ul>	<p><b>Examples of Active Efforts</b></p> <ul style="list-style-type: none"> <li>• Inviting representatives of Indian child’s Tribe to participate in providing support and services, participate in family team meetings, safety mapping, permanency planning, and resolving placement issues.</li> <li>• Offering and employing all available and culturally appropriate family preservation strategies and using remedial and rehabilitative services offered by Tribe.</li> <li>• Considering alternative ways to address the parents’/family’s needs if the optimum services do not exist or are not available.</li> </ul>

<ul style="list-style-type: none"><li>○ Some people within the Native American community have literacy challenges, which makes the copious paperwork associated with their case and services daunting and often overwhelming.<ul style="list-style-type: none"><li>▪ Assisting the parents with completing paperwork, rather than leaving them to complete it on their own is an active effort.</li></ul></li><li>● Active Efforts can sometimes take place outside the case plan as well.<ul style="list-style-type: none"><li>○ Many counties lack Native American foster homes that can take Native children where relatives are unavailable.<ul style="list-style-type: none"><li>▪ Active Efforts include recruitment of safe, competent Native American foster homes or working with non-Native placements to ensure they will maintain a child’s connections to their extended families, Tribe, and culture.</li></ul></li><li>○ In fact, Cal ICWA requires Active Efforts to be made to place the child with a family committed to enabling the child to visit with extended family and participate in cultural and ceremonial events. Federal regulations, published in December 2016, included a number of examples of what might constitute Active Efforts. These examples are available in the appendices.</li></ul></li><li>● 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.<ul style="list-style-type: none"><li>○ 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.</li><li>○ There are no exceptions in the ICWA to the mandate.</li><li>○ 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.<sup>28</sup></li></ul></li></ul>	
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<sup>28</sup> Native American Rights Fund. (2007). *A Practical Guide to the Indian Child Welfare Act*. (pp 93-94

## SKILLBUILDING ACTIVITY: ACTIVE EFFORTS VS. REASONABLE EFFORTS

- ❑ The purpose of this activity is for Trainees to transform the statements/activities from Reasonable Efforts to Active Efforts. Using page 51 in the Trainee Guide, instruct Trainees to discuss each of the statements below at their table group.
- ❑ Have Trainees chart the Active Efforts.
- ❑ After table groups, have worked through the activity have them post their charts around the room.
- ❑ Facilitate a large group report out where table groups share and example or 2 for each Active Efforts.
- ❑ If the groups struggle with making an activity an Active Effort, the trainer can share some of examples:
  - Identify three service providers for substance abuse treatment.  
Possible example of Active Efforts: *Identify American Indian service providers and/or providers with proven success working with Native people; include a list of substance abuse treatment options available through local Tribes; ask the family member which service providers they prefer, tell the client you will help them make the appointment and do so with the client present or allow the client to make the appointment while the social worker is present.*
  - Discuss placement options with the child's Native American grandmother. Possible example of Active Efforts: *Bring the grandmother coffee, make sure extended family members and the ICWA social worker are included in the conversation.*
  - Refer Mother for counseling.  
Possible example of Active Efforts: *Ask Mother whether she prefers working with a man or a woman and whether she would like to work with a Native American provider or with her Tribe. Make an appointment for Mother or help Mother make the appointment.*
  - Provide Father the address to his drug testing appointment.  
Possible example of Active Efforts: *Drive Father to his appointment or ask the tribal social worker to provide transportation.*
  - Give Father a list of parenting education classes to attend.  
Possible example of Active Efforts: *Ask Father if he prefers parenting education available from the Tribe, if so, provide the resources. Ask Father if he would like you to make the appointment, or help him make the appointment.*
  - Remind Mother to make a doctor's appointment.

### Skill-Building Activity: Active Efforts



<p>Possible example of Active Efforts: <i>Ask Mother if she needs help. Make the appointment for her with her present or help her make the appointment herself.</i></p> <ul style="list-style-type: none"> <li>• <u>Contact Mother every month while she is in rehab.</u> Possible example of Active Efforts: <i>Contact Mother for frequently while she is there; visit Mother in person. and deposit, move-in dates, etc. Take Mother and Father to see the apartments.</i></li> <li>• <u>Provide Mother and Father a copy of “Apartment-Finder Local Listings.”</u> Possible example of Active Efforts: <i>Contact some apartment managers to find out what is available, the rent</i></li> <li>• <u>Give Mother a bus tokens to get to her to her AA/NA meetings.</u> Possible example of Active Efforts: <i>Take Mother to her meetings or work with the Tribal social worker to arrange transportation to the meeting.</i></li> <li>• <u>Refer parents to the local TANF program for assistance with housing and employment.</u> Possible example of Active Efforts: <i>Refer parents to Tribal TANF and support the family in making the appointment.</i></li> <li>• <u>Ask non-Native foster home to be a placement for an Indian child.</u> Possible example of Active Efforts: <i>Seek out non-Native foster placement with proven success in fostering Native children; seek assurance the caregiver will utilize a wide array of resources to keep the child connected to culture; ensure caregiver is supportive of and, where possible, facilitates contact with family and extended family.</i></li> </ul>	
<p><input type="checkbox"/> Close this segment summarizing Active Efforts</p>	<p><b>Active Efforts at a Glance</b></p> <ul style="list-style-type: none"> <li>• Active efforts are intended to eliminate the need for removal.</li> <li>• Active efforts begin immediately if you have reason to believe this is an Indian child.</li> <li>• Active efforts is meant to help families believe in the process rather than become dependent.</li> </ul>

**Transition to the next activity:** Placement



## ACTIVITY 6C: Placement

Activity Time:	20 minutes (5 minutes lecture/15minutes activity)
Trainee Content:	Trainee’s Guide, pages 70-73
Slides:	54-64

**Description of Activity:** Lecture and Group Activity

**Before the Activity,** be thinking of how to integrate the following into the facilitated discussion:

- ❑ What is the take-away for Trainees?
  - The ability to properly identify ICWA compliant placement options.
- ❑ The trainer must ensure the following information is conveyed:
  - Placement preferences are intended to protect the child’s relationship with extended family and the Tribe.
  - The Agency can deviate from placement preferences when the Tribe chooses a difference order of preferences and/or when the Court finds that good cause exists not to follow the preferences.
  - Many counties are challenged with not having enough licensed foster homes. Active Efforts require agencies to seek out placements who will help the child maintain relationships with extended family and the Tribe.

### During the activity

<ul style="list-style-type: none"> <li>❑ Please note the ICWA provision relating to removal. ICWA does not prevent the emergency removal of an Indian child from his parent or Indian custodian or the placement of that child in a foster home or institution in order to prevent <i>imminent</i> hard to the child.</li> <li>❑ However, the emergency removal/placement must be terminated immediately when the removal or placement is no longer necessary to ensure the child’s safety and child custody proceedings shall be initiated, the child transferred to the jurisdiction of the appropriate Indian Tribe or returned to the parent or Indian custodian, whichever is appropriate.</li> </ul>	<p style="text-align: center;"><b>Emergency Removal</b></p> <ul style="list-style-type: none"> <li>• ICWA does not prevent the emergency removal of an Indian child to prevent physical damage or harm to the child.</li> <li>• The removal or emergency placement must terminate immediately when it no longer is necessary to prevent imminent physical damage or harm to the child.</li> </ul> 
<ul style="list-style-type: none"> <li>❑ 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.</li> </ul>	<p style="text-align: center;"><b>Placement</b></p> <p><b>Who is extended family?</b></p> <p>“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.</p> 

<p>❑ ICWA prescribes a specific order of placement for an Indian child who is in foster care or a pre-adoptive placement.</p>	<p style="text-align: center;"><b>Placement Preferences</b></p> <p>To ensure compliance with ICWA placement preference requirements, 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 ties must be applied.</p> 
<p>❑ 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.</p>	<p style="text-align: center;"><b>Placement Preferences: Foster Care/Pre-Adoptive</b></p> <p>Child must be placed in:</p> <ul style="list-style-type: none"> <li>• Least restrictive setting that is most like a family setting, taking into consideration sibling attachment and allows the child's special needs to be met, if any.</li> <li>• Within reasonable proximity to his or her home, extended family or siblings.</li> </ul> 
<p>❑ In the absence of good cause to the contrary, the placement preferences are as follows:</p> <ul style="list-style-type: none"> <li>• a member of the Indian child's 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).</li> <li>• foster home licensed, approved or specified by the Indian child's Tribe;</li> <li>• an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or</li> <li>• 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.</li> </ul>	<p style="text-align: center;"><b>Placement Preferences: Foster Care/Pre-Adoptive</b></p> <div style="text-align: center;"> <p>Extended Family</p> <p>Foster care licensed, approved or specified by Tribe</p> <p>Indian foster home licensed by state</p> <p>Institution approved by Tribe</p>  </div>
<p>❑ For an Indian child who will be in adoptive placement, the preferences are as follows:</p> <ul style="list-style-type: none"> <li>• a member of the child’s extended family;</li> <li>• other members of the Indian child’s Tribe; or</li> <li>• other Indian families.</li> </ul> <p>❑ There is no fourth item in the order of preference that allows for adoption of Indian children by non-Indians.</p>	<p style="text-align: center;"><b>Placement Preferences for Adoptive (Permanent) Placements</b></p> <div style="text-align: center;"> <p>Extended family</p> <p>Tribal Member</p> <p>Other Indian family</p> </div> <p><small>Note: There is no fourth item in the order of preference that allows for adoption of Indian children by non-Indians.</small></p>

<ul style="list-style-type: none"> <li>❑ 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. Additionally, a court may determine that good cause exists not to follow the placement preferences, for example, where there are no Native American foster homes available. In this case, California ICWA requires Active Efforts to be made to find someone committed to maintaining the Tribal connection.</li> </ul>	<p><b>Placement Preferences: Tribe</b></p> <p>If the child’s Tribe establishes a different order of preference, the preference must be followed so long as the placement is the least restrictive setting appropriate to the needs of the child.</p> <p>The court may determine good cause exists to deviate from the placement preferences.</p>
<ul style="list-style-type: none"> <li>❑ It is important to remember that <i>the prevailing social and cultural standards of the Indian community</i> 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. Collaborating with and utilizing Tribal ICWA and social services is critical to ensuring best outcomes for the child and ICWA compliance.</li> <li>❑ Placement preferences also apply whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, pre-adoptive, 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.</li> <li>❑ 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.</li> </ul>	<p><b>Placement Preferences</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul> 
<ul style="list-style-type: none"> <li>❑ <b>Placement Skill Building Activity</b></li> <li>❑ Trainer asks Trainees to refer back to the “Additional Information” page in the Inquiry and Notice section (Trainee guide, page 31).</li> <li>❑ Ask Trainees to read the additional information provided related to the scenario (Trainee guide, page 55).</li> </ul>	<p><b>Skill-Building Activity: Placement</b></p> 

<ul style="list-style-type: none"> <li>❑ Trainees need to identify 3 foster placement options for Jack that are consistent with the requirements of ICWA and be prepared to share their choices during the large group discussion.</li> <li>❑ Trainer reconvenes the group.</li> <li>❑ Trainer will ask each group their placement choices and why they chose the placement.</li> <li>❑ Trainer should make sure that each group mentions collaborating with the Tribe by asking whether the Tribe has any preferences. Because the group does not know what the Tribe’s preference is, the trainer should ask the group what happens if the Tribe has a different placement preference.</li> <li>❑ Additionally, the trainer should ask what the social workers should do if they do not get any input from the Tribe? Answer: document all of their communications.</li> </ul>	
<ul style="list-style-type: none"> <li>❑ Close this segment by summarizing Placement</li> </ul>	<p style="text-align: center;"><b>Placement at a Glance</b></p> <ul style="list-style-type: none"> <li>• Place with family/extended family</li> <li>• Work with Tribal ICWA worker to identify placement options</li> </ul> 
<ul style="list-style-type: none"> <li>❑ Keep this slide up during break and highlight the contributions being made by Native Americans</li> </ul>	<p style="text-align: center;"><b>15-Minute Break</b></p>  <p style="text-align: center;"><small>Dr. Michael Yellow Bird (Mandan, Hidatsa, Arapaho)</small></p> <p style="text-align: center;"><small>Dr. YellowBird is recognized for his work on Indigenous Peoples' health, leadership, and cultural rights; the effects of colonization and methods of decolonization; developing social work approaches; decolonizing self and military service; neurodecolonization and mind-body approaches; ancestral and Indigenous Peoples' traditional medicines and contemplative practices; ancestral and paleo eating and lifestyle; and the Rights of Mother Earth.</small></p>

**Transition to the next activity: Tribal Sovereignty**

## ACTIVITY 6D: Tribal Sovereignty

<b>Activity Time:</b>	10 minutes
<b>Trainee Content:</b>	Trainee’s Guide, pages 74-78
<b>Slides:</b>	65-67

**Description of Activity:** Lecture

**Before the Activity,** Trainer may ask Trainees what they remember from the eLearning about sovereignty and process any new information with them.

- ❑ What is the take-away for Trainees?
  - To elevate the status of a Tribal government to be equal to the federal and state governments
  - To understand the relationship between Tribes and state and federal governments is a government-to-government relationship.
  - To understand the difference between a recognized and an unrecognized Tribe
  - To enhance understanding of the Spirit of ICWA
  - Best practices when engaging and teaming with Tribes
  
- ❑ The trainer must ensure the following information is conveyed:
  - Engagement with Tribes should begin early (before a case even begins) and should be ongoing
  - Working with a Tribe during a dependency case should be much like dealing with a foreign country:
  - In 2014, the U.S. Department of Justice launched its ICWA compliance effort, which includes actively identifying state court cases where the DOJ can weigh in on the unnecessary and illegal removal of Indian children from their families and communities. The DOJ is collaborating with the Bureau of Indian Affairs and Health and Human Services to promote ICWA compliance.
  - California has an ICWA compliance workgroup that works with the CA Attorney General’s office to investigate cases where ICWA is not followed.
  - It is important to both Tribes and the State that new social workers understand and respect Tribal sovereignty.

### During the activity

- ❑ Explains the purpose of this section is to help social workers understand the nature of an Indian Tribe as a government and their unique position within the federal family of governments.
- ❑ Ask Trainees to volunteer to read each one of the bullets aloud to the group.
- ❑ Trainer need to emphasize the following:
  - It is a common misconception that the relationship between Indian Tribes and the United States is based on race. It is not—it is a political relationship. The special relationship between the U.S. and Indian Tribes is based on the Tribes’ status as a sovereign government, which is why

#### Indian Tribes in the U.S.

- **Federally recognized:** the U.S. government formally recognizes the Tribal government, the federal government has legally enforceable obligations to these Tribes (567 federally-recognized Tribes)
- **Non-recognized or unrecognized:** The U.S. government does not recognize the Tribal government, the federal government does not have legally enforceable obligations to these Tribes (approximately 400 non-recognized Tribes)
- **State-recognized Tribes:** U.S. government does not recognize the Tribal government, but the State government does
- **Relationship with the federal and state governments** is a government-to-government relationship, in the same way the United States relates to Mexico, or Arizona to California.
- **Diverse structure, government process, and revenue sources** through which government services are provided.

<p>the federal government is able to treat Native American people differently than others and not violate constitutional rules relating to equal protection of the law.</p> <ul style="list-style-type: none"> <li>○ Tribal governments predate the Constitution and have long been viewed as distinct political entities that are limited by the Constitution like the federal or state governments are<sup>29</sup>. Independent of the United States’ government, they are subject to federal authority but retain their own inherent powers of self-government, including the authority to make and enforce laws, raise revenue, and determine membership (citizenship).</li> </ul>	
<ul style="list-style-type: none"> <li>❑ Tribes exercise their sovereignty in a number of different ways with regard to child welfare.</li> <li>❑ 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.</li> <li>❑ 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.</li> <li>❑ Tribes may approve tribal foster homes.</li> <li>❑ Tribes have the discretion to choose their level of involvement in the case.</li> <li>❑ 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.</li> <li>❑ 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.</li> <li>❑ It is important to note that parents cannot waive a tribe’s right to participate in an ICWA case.</li> </ul>	<p style="text-align: center;"><b>Tribal Sovereignty: Child Welfare</b></p> <ul style="list-style-type: none"> <li>• Designate ICWA social worker or advocate as primary contact for a child dependency case</li> <li>• Designate ICWA representatives to receive notice of dependency proceedings involving Indian children</li> <li>• Complete background checks and approve foster homes for children in dependency</li> <li>• Define expert witness criteria</li> <li>• Order Tribal Customary Adoption</li> </ul>
<ul style="list-style-type: none"> <li>❑ Trainer ask for volunteers to read each of the bullets aloud.</li> </ul> <p>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.</p> <ul style="list-style-type: none"> <li>❑ TRAINER’s NOTE: Please refer Trainees to their Trainee guide for additional tips and protocols (pages 60-61) and more information about Tribal Sovereignty beginning on page 57.</li> </ul>	<p style="text-align: center;"><b>Engagement and Teaming with Tribes</b></p> <ul style="list-style-type: none"> <li>• When working and communicating with Tribes, show the same level of respect and professionalism as you would to a governor of a neighboring state. Tribal representatives are representatives of a sovereign government.</li> <li>• As soon as you are aware your case is or may be an ICWA case, contact the appropriate Tribal ICWA social worker or advocate. Develop and maintain a relationship with the ICWA social worker or advocate before you need them.</li> <li>• If it is necessary to visit the reservation, contact the social worker to ask permission and for the appropriate protocol for a visit. It is not advised to visit the reservation unannounced.</li> <li>• Meaningfully consider the Tribe’s input in the same way you would any other collaborative partner. You and the Tribe want the best outcome for the child.</li> <li>• Attempt to resolve the case informally before bringing the case before the court. Collaborative efforts result in better outcomes for the child and family, and fewer wasted resources.</li> </ul>

**Trainer Foundational Information for the segment**

ICWA defines an Indian tribe as any 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. It is a common misconception

<sup>29</sup> Santa Clara Pueblo v. Martinez 436 U.S. 49 (1978) at page 57.

that the relationship between Indian tribes and the United States is based on race. It is not—it is a political relationship. The special relationship between the U.S. and Indian tribes is based on the tribes’ status as a sovereign government, which is why the federal government is able to treat Native American people differently than others and not violate constitutional rules relating to equal protection of the law.

Indian tribes are politically and culturally distinct entities that maintain unique culture, language and history. Tribal governments predate the Constitution and have long been viewed as distinct political entities that are limited by the Constitution like the federal or state governments are . Independent of the United States’ government, they are subject to federal authority but retain their own inherent powers of self-government, including the authority to make and enforce laws, raise revenue and determine membership (citizenship).

The United States’ trust responsibility towards tribes is a legally enforceable obligation of the United States. Its obligations include, among other things, providing healthcare, education and other services; and protecting 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 formal recognition of 109 Indian tribes. The “terminated” tribes’ lands were withdrawn from trust status, federal criminal jurisdiction was passed to states, and federal services provided to tribes, including healthcare, education and public safety, ended. A number of tribes have been able to regain their federally-recognized status. 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 security of Indian tribes and families. ICWA is a remedial statute, meaning that it is intended to undo the historic trauma of Native children and families by 1) preventing the unwarranted break-up of Indian families by child welfare agencies and, when a child must be removed from the family, 2) setting 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 may approve tribal foster homes. 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 important to note that parents cannot waive a tribe’s right to participate in an ICWA case.

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.
- Obtain a list of Indian Child Welfare Act agents for service of notice at <http://www.indianaffairs.gov/WhoWeAre/BIA/OIS/HumanServices/IndianChildWelfareAct/index.htm>. You may also obtain a list by historical affiliation of designated agents on the same webpage.
- 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.

Approximately every other year, a list of federally-recognized tribes is published in the federal register. There are more than 500 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 (CDSS) list of tribes. The CDSS list includes the more commonly known names of the tribes 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.

**Transition to the next activity:** Concurrent Planning

## ACTIVITY 6E: Concurrent Planning

<b>Activity Time:</b>	5 minutes
<b>Trainee Content:</b>	Trainee’s Guide, pages 6379-80
<b>Slides:</b>	68-76

### Description of Activity: Lecture

- ❑ Explain in general terms Tribal Customary Adoption
- ❑ Emphasize the importance of meaningful consultation with Tribes throughout the process but especially where there is concurrent planning.

**Before the Activity,** be thinking of how to integrate the following into the facilitated discussion:

- ❑ What is the take away for Trainees?
  - To understand the statewide practice model requirements of teaming and engaging with Tribes
  - To understand the Tribal Customary Adoption process
- ❑ The trainer must ensure the following information is conveyed:
  - Tribal Customary Adoption (TCA) is a permanency option recognized in California law.
  - TCA can only be chosen by the Tribe, and where the Tribe does recommend TCA, the Agency can recommend it as the preferred option.
  - The Tribe and parents/Indian custodians must be informed of TCA as an option as soon as concurrent planning begins.

### During the activity

- ❑ To convey the important information about Concurrent Planning, read the slides and have Trainees review information on Concurrent Planning in their Trainee guide beginning on page 63.

#### Concurrent Planning

- Tribes hold legal rights under ICWA and can influence many aspects of a dependency case
- Partnership with Tribes is key to effective child welfare practice and ICWA compliance
- Successful partnerships begin with early engagement and meaningful consultation
- Consultation *required* as soon as concurrent planning begins (which is as soon as child is removed)



#### Concurrent Planning (cont'd)

- Under California law, permanency options for an Indian child include guardianship, adoption and, under California ICWA, Tribal customary adoption.
- Tribal customary adoption (TCA) is adoption by and through Tribal custom, traditions, or law of an Indian child's Tribe.



<ul style="list-style-type: none"> <li>❑ Tribal Customary Adoption (TCA) is an adoption that takes place under the laws, customs or traditions of the child’s Tribe.</li> <li>❑ It is a culturally-appropriate means of achieving permanency for an Indian child.</li> <li>❑ Unlike conventional adoption, there is no requirement for parental rights to be terminated in a TCA, which is often in conflict with Tribal beliefs and values.</li> <li>❑ TCA becomes a permanency option for every Indian child as soon as the Tribe identifies the child as an Indian child.</li> <li>❑ As soon as concurrent planning begins, social workers must consult with the Tribe       <ol style="list-style-type: none"> <li>1) to inform them that TCA is a permanency plan and</li> <li>2) to determine whether TCA is an appropriate permanent plan.</li> </ol> </li> <li>❑ Only the Tribe can choose TCA as the permanent plan and it can do so at any time after disposition.</li> </ul>	<p style="text-align: center;"><b>Tribal Customary Adoption (TCA)</b></p> <ul style="list-style-type: none"> <li>• Available as an option as soon as the child is confirmed to be an Indian child</li> <li>• Termination of parental rights is <b>not</b> required under TCA</li> <li>• Only the Tribe may choose TCA; Tribes are not required to choose TCA</li> <li>• Tribes do not have to commit to TCA until the 366.26 hearing</li> <li>• The Tribe issues the TCA order, not the state court</li> </ul>
<ul style="list-style-type: none"> <li>❑ If the Tribe has chosen TCA as the preferred permanent plan, the process can proceed after the court has ordered TCA.</li> <li>❑ The Tribe takes the lead in the next steps.</li> <li>❑ The Tribe has 120 days to complete a home study, background checks and issuing and filing the TCA order, though the home study and background checks can and should be done or underway before this point.</li> <li>❑ The home study has to be completed before the TCA is written.</li> <li>❑ The Tribe is able to request a continuance if these things are not completed within the 120 days.</li> </ul>	<p style="text-align: center;"><b>TCA: General Process</b> <i>(cont'd)</i></p> <ul style="list-style-type: none"> <li>• TCA placement</li> <li>• Adoption petition filed</li> <li>• Finalization hearing set</li> <li>• Adoption/Dependency terminated</li> </ul> 
<ul style="list-style-type: none"> <li>❑ Once the TCA order is written and filed, the law requires the Tribal order to be recognized by the state court (afforded full faith and credit).</li> <li>❑ Once the order is recognized, the TCA placement can occur.</li> <li>❑ The prospective adoptive are responsible for filing the adoption petition, and once they do so, the finalization hearing will be set.</li> <li>❑ The adoption will be finalized at the hearing and the dependency terminated.</li> </ul>	<p style="text-align: center;"><b>Tribal Customary Adoption (TCA)</b></p> <ul style="list-style-type: none"> <li>• Available as an option as soon as the child is confirmed to be an Indian child</li> <li>• Termination of parental rights is <b>not</b> required under TCA</li> <li>• Only the Tribe may choose TCA; Tribes are not required to choose TCA</li> <li>• Tribes do not have to commit to TCA until the 366.26 hearing</li> <li>• The Tribe issues the TCA order, not the state court</li> </ul>
<ul style="list-style-type: none"> <li>❑ Refer Trainees to their Trainee guide for additional information about TCA with regard to the Tribe.</li> </ul> <p>Highlight for the Trainees the following Social Worker responsibilities with regard to concurrent planning on an ICWA case:</p> <ul style="list-style-type: none"> <li>• Must consult with the Tribe about an appropriate permanent plan as soon as concurrent planning begins.</li> <li>• Must inform the court at disposition TCA was discussed and the Tribe’s choice if one has been made.</li> <li>• Must consult with the Tribe and report to the court at every hearing from disposition until 366.26 that consultation has occurred and the Tribe’s permanent plan choice, if one has been made.</li> <li>• Must report the Tribes’ choice for a permanency plan to the court, even if the Tribe reports to the court.</li> </ul>	<p style="text-align: center;"><b>TCA: Practice Reminders</b></p> <ul style="list-style-type: none"> <li>• Must consult with the Tribe about an appropriate permanent plan as soon as concurrent planning begins.</li> <li>• Must inform the court at disposition TCA was discussed and the Tribe’s choice if one has been made.</li> <li>• Must consult with the Tribe and report to the court at every hearing from disposition until 366.26 that consultation has occurred and the Tribe’s permanent plan choice, if one has been made.</li> <li>• Must work in consultation with the Tribe to minimize unnecessary placement disruptions.</li> <li>• Facilitate placement, and supporting the adoptive parents through the adoption assistance agreement.</li> <li>• Submit a final report to the court regarding the TCA for the finalization hearing.</li> </ul>

<ul style="list-style-type: none"> <li>• Must work in consultation with the Tribe to minimize unnecessary placement disruptions.</li> <li>• Facilitate placement, and supporting the adoptive parents through the adoption assistance agreement.</li> <li>• Submit a final report to the court regarding the TCA for the finalization hearing.</li> </ul>	
<p>❑ Best practice: Make sure to consult with the Tribe when preparing each court to confirm their choice of permanent plan has not changed.</p>	<p style="text-align: center;"><b>Best Practice: Concurrent Planning</b></p> <p style="text-align: center;">Make sure to consult with the Tribe when preparing each court report to confirm their choice of permanent plan has not changed.</p> 
<p>❑ Close this segment by summarizing Concurrent Planning</p>	<p style="text-align: center;"><b>Concurrent Planning at a Glance</b></p> <ul style="list-style-type: none"> <li>• Early and meaningful consultation is the key to successful partnerships with Tribes</li> <li>• Remember to inform family and Tribe of Tribal customary adoption as an option early in the case</li> <li>• TCA may only be chosen by the Tribe; the TCA order is issued only by the Tribe</li> </ul> <p style="text-align: center;">🌸🌸🌸🌸🌸🌸🌸🌸🌸</p>

**Trainer Foundational Information for the segment**

Developing and maintaining a partnership with tribes is key to an effective child welfare practice and ICWA compliance. The cornerstone of this unique relationship is early engagement and meaningful consultation. Meaningful consultation is not making decisions and then “checking in” with the tribe, but rather is respectful interaction with the tribe as a partner, full consideration of the tribe’s inputs and recommendation. Tribes hold legal rights under ICWA and can influence many aspects of a dependency case, from case plan development and services identification, to placement and permanency. Engagement and teaming with tribes should begin as soon as there is reason to know a child is an Indian child and is required when concurrent planning begins. Under California law, permanency options include guardianship, adoption and tribal customary adoption .

Tribal customary adoption (TCA) is an adoption that takes place under the laws, customs or traditions of the child’s tribe. It is a culturally-appropriate means of achieving permanency for an Indian child. Unlike conventional adoption, there is no requirement for parental rights to be terminated in a TCA, which is often in conflict with tribal beliefs and values. TCA becomes a permanency option for every Indian child as soon as the tribe identifies the child as an Indian child. As soon as concurrent planning begins, social workers must consult with the tribe 1) to inform them that TCA is a permanency plan and 2) to determine whether TCA is an appropriate permanent plan. Only the tribe can choose TCA as the permanent plan and it can do so at any time after disposition.

If the tribe has chosen TCA as the preferred permanent plan, the process can proceed after the court has ordered TCA. The tribe takes the lead in the next steps. The tribe has 120 days to complete a home study, background checks and issuing and filing the TCA order, though the home study and background checks can and should be done or underway

before this point. The home study has to be completed before the TCA is written. The tribe is able to request a continuance if these things are not completed within the 120 days.

Once the TCA order is written and filed, the law requires the tribal order to be recognized by the state court (afforded full faith and credit). Once the order is recognized, the TCA placement can occur. The prospective adoptive are responsible for filing the adoption petition, and once they do so, the finalization hearing will be set. The adoption will be finalized at the hearing and the dependency terminated.

Additional information about TCA with regard to the tribe:

- A tribe does not have to formally intervene in a case in order for TCA to be considered as a permanency option.
- Tribes are not required to choose TCA as a permanency option.
- Tribes do not have to commit to TCA until the 366.26 hearing.
- If TCA is selected as a permanent plan, tribes have 120 days to submit the TCA order; if they do not, the court has the discretion to choose another plan.
- Only the tribe can choose TCA.
- The tribe issues the TCA order, not the state court.
- Tribal customary adoption orders are entitled to receive full faith and credit (formal recognition and enforcement) by the state court

Social worker responsibilities with regard to concurrent planning:

- Must consult with the tribe about an appropriate permanent plan as soon as concurrent planning begins.
- Must inform the court at disposition TCA was discussed and the tribe's choice if one has been made.
- Must consult with the tribe and report to the court at every hearing from disposition until 366.26 that consultation has occurred and the Tribe's permanent plan choice, if one has been made.
- Must report the Tribes' choice for a permanency plan to the court, even if the Tribe reports to the court.
- Must work in consultation with the tribe to minimize unnecessary placement disruptions.
- Facilitate placement, and supporting the adoptive parents through the adoption assistance agreement.
- Submit a final report to the court regarding the TCA for the finalization hearing.

Best practice: Make sure to consult with the tribe when preparing each court to confirm their choice of permanent plan has not changed.

**Transition to the next activity:** Qualified Expert Witness

## ACTIVITY 6F: Qualified Expert Witness

Activity Time:	5 minutes
Trainee Content:	Trainee's Guide, pages 81-82
Slides:	77-81

Description of Activity: Lecture

### During the activity

- ❑ What is the take away for Trainees?
  - To understand the role of a qualified expert witness (QEW)
  - Best practice is to contact the QEW early in the case
  - Work with the Tribe to identify the QEW
- ❑ The trainer must ensure the following information is conveyed:
  - The QEW is a tool to guard against bias in decision making.
  - Social workers should contact the Tribe as soon as possible to identify the QEW.
  - QEWs should be contacted as soon as possible and should be encouraged to speak with the children, caregivers, parents and Tribal social worker.

#### Qualified Expert Witness

- Diminishes risk of bias in decision-making
- Has extensive knowledge and understanding of Tribal culture, in particular child-rearing practices and family and Tribal structure
- Testifies when a child must be removed or when parental rights must be terminated.
  - Testifies as to whether the continued custody is likely to result in serious emotional or physical harm to the child
  - Testifies about the Tribe's culture
- May also testify on placement and active efforts

#### 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.

#### Who Is a Qualified Expert Witness? (cont'd)

- 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?

- 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:  
<http://www.courtinfo.ca.gov/programs/info/programs/description/jta-ICWEExpertWitness.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 at the outset of the case.



## Trainer Foundational Information for the segment

One of the remedial aspects of ICWA is to guard against bias in decisions regarding the safety and well-being of Indian children. Among the Congressional findings that resulted in ICWA is the acknowledgement that many social workers were uninformed about Native American cultural values and their decisions were based on their own social norms rather than those of the tribal community. The testimony of a qualified expert witness is intended to diminish the risk of bias in decision making with regard to Native American children and families.

ICWA prohibits foster care placement or terminating parental rights without evidence the child is likely to suffer serious emotional harm or physical damage if the child remains with the parents or Indian custodian. The evidence must include qualified expert witness testimony, and should be offered at the dispositional hearing.

The qualified expert witness testifies as to the detriment to the child of remaining with the parents or Indian guardian based on the prevailing social and cultural standards of the tribe. For this reason, it is critical for the qualified expert witness to have extensive knowledge and understanding of tribal culture, in particular, child-rearing practices and family and tribal structure. They may also testify on 1) placement, especially when the Agency is recommending deviation from placement preferences because of the special needs of the child; and 2) active efforts and whether they were made in a manner consistent with the prevailing social and cultural values of the child's tribe, and utilized the resources found in the extended family, tribe, tribal social services and Native American caregiver service providers.

Social workers helping to identify a qualified expert witness should keep in mind that qualified expert witnesses can be almost anyone, such as a social worker, doctor, psychologist, traditional tribal healer, spiritual leader, historian or elder. Those most likely to be a qualified expert witness is

- 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.

Qualified expert witnesses 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.

The expert witness or witnesses should be identified upon initial contact with the child. Social workers are encouraged to ask the tribe for its qualified expert witnesses. If no tribe is involved, begin the recruitment early and avoid waiting until the hearing is near. The Judicial Council of California, Administrative Office of the Courts' Center for Children, Families and Courts Indian Program has posted a list of individuals who are identified as qualified experts for ICWA purposes. This list is a resource and any agency or individual seeking to use an individual on the list is responsible for independently evaluating that person for suitability for participating in an ICWA proceeding.

### **Tribal Expert Witnesses**

Tribes are frequently asked for qualified expert witness testimony. Tribes can provide testimony about the relevance of cultural norms in a particular case and county/state compliance or lack of compliance with ICWA requiring compliance with those norms. Tribes outside of California often decline to provide their own qualified expert witness—they seldom have the resources to do so. Qualified expert witness testimony can have an enormous impact on a case and counties should always try and work with tribes to secure qualified expert witness.

**Best Practice Tip:** Document all your efforts related to inquiry, notice, active efforts and placement. Contact the child's tribe as soon as possible and work the tribe to identify a qualified expert witness.

Link to list of expert witnesses statewide:

<http://www.courtinfo.ca.gov/programs/cfcc/programs/description/jrta-ICWAExpertWitness.htm>

**Transition to the next segment:** What Stands Out from Today/Closing Circle

## Segment 7: What Stands Out from Today/Closing Circle

<b>Segment Time:</b>	20 minutes
<b>Activity Time:</b>	ACTIVITY 7A: What Stands Out from Today? 20 minutes
<b>Trainee Content:</b>	None
<b>Slides:</b>	82-90

**Description of Activity:** Brief review of the day’s learning.

### During the activity

<p><input type="checkbox"/> Trainer quickly reviews the questions that were recorded on the white sheets of paper to ensure all the questions were addressed throughout the day.</p>	
<p><input type="checkbox"/> Trainer asks Trainees one thing they remember about each of the 5 ICWA provisions.</p>	<p><b>ICWA’s Five Provisions</b></p> <ul style="list-style-type: none"> <li>• Inquiry &amp; Notice</li> <li>• Active Efforts</li> <li>• Placement</li> <li>• Concurrent Planning</li> <li>• Qualified Expert Witness</li> </ul>
<p><input type="checkbox"/> Trainer may ask Trainees:</p> <ul style="list-style-type: none"> <li>• What challenges do you expect to have on an ICWA case?</li> <li>• What can you do to overcome those challenges?</li> </ul> <p><input type="checkbox"/> Trainer must ensure the following information is conveyed:</p> <ul style="list-style-type: none"> <li>• Reducing disproportionality requires identifying every Indian child in foster care.</li> <li>• The most common reason ICWA cases are appealed is because of issues with notice. Appeals represent wasted resources and delayed permanency for the child. Appeals are preventable.</li> <li>• Keeping children connected to extended family, Tribal community and culture results in better outcomes for Native youth including resiliency and greater protective factors.</li> <li>• Cal ICWA includes provisions that allow non-recognized Tribes to participate in cases as though they were ICWA cases</li> <li>• ICWA best practices should be best practice for all children.</li> </ul>	<p>What stands out from today?</p> 

- ❑ Transition to the closing circle by asking for volunteers to read the following slides to highlight the best practices in working with Native American children and families.

**Best Practice**

Assume that the child is an Indian child unless and until there is information indicating otherwise.



**Best Practice**

Document clearly and objectively all of your efforts, but especially those related to inquiry, notice, active efforts and placement.



**Best Practice**

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**

Follow the Spirit of ICWA. Ensure access to culturally appropriate services and facilitate ties between the child, extended family and tribe when the child is not eligible for membership in a federally recognized tribe or when the child's tribe is an unrecognized tribe.



**Best Practice**

Complete every section of ICWA 010 and 030 forms. If, after asking, you are unable to obtain information, write "information unavailable" on the form.



**Best Practice**

Make sure to consult with the tribe when preparing each court report to confirm their choice of permanent plan has not changed.





## Segment 8: Post Test

<b>Segment Time:</b>	35 minutes
<b>Activity Time:</b>	Activity 8A: Post Test 30 minutes Activity 8B: Trainee Satisfaction Surveys 5 minutes
<b>Materials:</b>	Common Core 3.0 Preliminary Materials Post-test questions Answer sheet for Trainees
<b>Trainee Content:</b>	None
<b>Slides:</b>	91-92

### **Description of Activity:**

Please review instructions provided in Segment 1: Activity 1B. Administer Post-test

### **Training Activity:**

**Test Administrator or Trainer: Please follow all instructions below; following the complete instructions from beginning to end will ensure that you have successfully facilitated the embedded evaluation portion of this training.**

### **General Tips:**

Trainers should carefully read the content contained within this Trainer’s Guide and consult with your respective RTA/UCCF to access the [Overview of Evaluation Protocol](#) document, vignette(s), and embedded evaluation materials or pre-/post-test materials prior to proceeding with any type of evaluation.

The overview document and all up-to-date evaluation materials listed below are located in the CalSWEC website under the password protected link, “RTA Evaluation - Training Evaluation Materials for Common Core.” **Contact your respective RTA/UCCF point person to request this information and to ensure you have the most up-to-date evaluation materials.**

### **Materials:**

- Two 9x12 envelopes:
  - 1 in which trainer collects completed post-test
  - 1 in which trainer collects all remaining evaluation materials and test forms

## During the activity

### Activity 8A: Post Test

- Follow the evaluation protocols below to conduct the post-test.
- 1. Explain how to generate the ID code:
  - a. Ask trainees to put their 10-character ID **code on every page** of their answer sheet using only capital letters in their best print. Directions can be found at the top of the Trainee's evaluation answer sheets.
- 2. Instruct Trainees on how to take the test (script):
  - a. This is the post-test at the end of the course. The purpose of the evaluation is not to evaluate them as individuals, but to get feedback on how well the training is doing in improving knowledge for trainees as a group. Future revisions to the training material will be based in part on overall test results.
  - b. Emphasize that the feedback is important to us to help improve training. (You can really help set the tone if you emphasize that getting this feedback is important and not just busywork or a chore to get through.)
- 3. Trainees complete the knowledge post-test:
  - Explain that there are approximately 25-30 multiple-choice questions on the test, and that trainees have approximately 30 minutes to complete the evaluation/test.
  - Tell trainees to please use ballpoint blue or black ink pens or other types of dark ink pens that will not bleed through to the back of the answer sheet. (Please avoid the use of felt-tip pens for the answer sheets, as they bleed through to the other side of the answer sheets and can negatively affect the scanning/data capture process.)
  - Tell trainees that they should completely fill in the bubble indicating "post test."
  - Tell trainees that they should completely fill in the bubble next to the letter of the choice (A, B, C, or D) on the answer sheet that best answers each test question.
  - Ask trainees to work carefully and thoughtfully - trainees should try to answer each question and give only one answer - whichever they think is the best choice.
  - If trainees make a mistake or want to change their answer, instruct them to cross out the mistake with a clear, well-defined "X" and then completely fill in the bubble of the answer they would like credit for.

### Post Test, Evaluation and Closing



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<ul style="list-style-type: none"> <li>• Upon finishing the test, trainees should review it once more to see if they may have accidentally missed any questions.</li> </ul> <p><b>4. Collect the test forms:</b></p> <ul style="list-style-type: none"> <li>• Remind trainees to put their 10-digit ID codes at the top of each form.</li> <li>• As you collect them, please check for missing, or incorrectly generated ID codes, and encourage people to fill them in or correct them. Any missing codes mean we can't use the data.</li> <li>• Test administrators and trainers should place all completed pre-tests in an envelope labeled "PRE-TEST". After gathering completed pre- and post-tests. Test administrators should send the original copies of the completed tests to CalSWEC.</li> <li>• Reminders - Trainers, please: <ul style="list-style-type: none"> <li>○ Do NOT provide specific questions or answers from the test. At this time there is only a single form of the test that is used both pre- and post- training.</li> <li>○ Refrain from distributing copies of the answer key to any trainees.</li> <li>○ Prevent trainees from taking copies of the tests with them.</li> </ul> </li> </ul>	
<p><b>Activity 8B: Trainee Satisfaction Surveys</b>  Once Trainees have completed the post-test provide them with the Trainee satisfaction survey. Once completed they can be dismissed.</p>	<p style="text-align: center;"><i>Thank you  for working towards  improved outcomes  for Native American  foster youth!</i></p>

**End of Training**

## Supplemental Resources

Supplemental resources are available on the Tribal STAR website: <http://theacademy.sdsu.edu/Tribal STAR>:

- ❑ “Tips for Following Protocol”
- ❑ “Tribal Engagement Checklist”
- ❑ “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”
- ❑ American Indian Enhancement Toolkit located at: <http://calswec.berkeley.edu/toolkits/implementation-toolkit-american-indian-enhancement-project/implementation-toolkit-american-indian-enhancement-project>

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## Materials Check List

- Registration material
- ICWA Classroom Trainer Guide
- ICWA Classroom Trainee’s Workbook
- ICWA Classroom PowerPoint
- Current Federal Register listing of Designated ICWA Agents for each Trainee
- Video Links:
  
- Optional:
- Food (continental breakfast/lunch)
- 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 Trainees.
- Talking Stick for closing circle

# Appendices

## APPENDIX A: THE INDIAN CHILD WELFARE ACT

### UNITED STATES CODE TITLE 25 - INDIANS CHAPTER 21 - INDIAN CHILD WELFARE Sections 1901-1922 (Edited for Length)

§ 1901. Congressional findings.

§ 1902. Congressional declaration of policy.

§ 1903. Definitions.

§ 1911. Indian tribe jurisdiction over Indian child custody proceedings.

§ 1912. Pending court proceedings.

§ 1915. Placement of Indian children.

§ 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception.

§ 1922. Emergency removal or placement of child; termination; appropriate action.

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§ 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 and, through this and other constitutional authority, Congress has plenary power over Indian affairs; (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.

(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.

#### § 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; preference. 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 preference. 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.

§ 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.

§ 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.

## APPENDIX B: QUICK REFERENCE: INVOLUNTARY PROCEEDINGS AND ACTIVE EFFORTS

### Quick Reference Sheet for State Agency Personnel in Involuntary Proceedings\*



U.S. Department of the Interior, Bureau of Indian Affairs  
Final Rule: Indian Child Custody Proceedings  
25 CFR 23

**Inquiry.** The court will ask at the beginning of each child-custody proceeding:

*Do you know, or is there a reason to know, the child is an "Indian child" under the Indian Child Welfare Act (ICWA)?*

An "Indian child" is:

- A member of a federally recognized Tribe or
- Eligible for membership in a federally recognized Tribe and has a biological parent who is a member.

Indications of "reason to know" include—

- Anyone, including the child, tells the court the child is an Indian child or there is information indicating the child is an Indian child;
- The domicile or residence of the child or parent/Indian custodian is on a reservation or in an Alaska Native village;
- The child is, or has been, a ward of Tribal court; or
- Either parent or the child has an ID indicating Tribal membership.

Whether a child is an "Indian child" does not consider factors outside the statutory definition, such as:

- Participation of the parents or the Indian child in Tribal activities;
- Relationship between the Indian child and his or her parents;
- Whether the parent ever had custody of the child, or
- The Indian child's blood quantum.

**Pending verification.** The court will treat the child as an Indian child, unless and until it is determined on the record that the child is not an "Indian child" under the Indian Child Welfare Act (ICWA).

**Due diligence to identify "Indian child's Tribe" and verify membership/eligibility.** Use due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is a member or a biological parent is a member and the child is eligible for membership.

**Inquire as to domicile and residence.** The court will look at whether the Indian child's domicile or residence is on a reservation or the child is a ward of Tribal court to determine whether the Indian child's Tribe has exclusive jurisdiction.

**Use and document active efforts to prevent the breakup of the family.** You must use active efforts to prevent the breakup of the family. Before ordering an involuntary foster care placement or termination of parental rights (TPR), the court must conclude that active efforts have been made to prevent the breakup of the Indian family and those efforts have been unsuccessful. The court will require active efforts to be documented in detail in the record.

**Active efforts** are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. See 25 CFR § 23.2 for the more expansive definition and examples.

**If an emergency removal under State law is necessary.** An emergency removal or placement is any removal/placement of an Indian child under State law without the full suite of ICWA protections, regardless of the label used for the removal or placement, and is permitted to prevent "imminent physical damage or harm" to the child. Any emergency removal or placement of an Indian child:

- **Must terminate** immediately when the removal or placement is no longer necessary to prevent "imminent physical damage or harm" to the child and
- **Cannot last more than 30 days** unless the court makes certain determinations.

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**IMPORTANT NOTE:** This quick reference guide is not comprehensive and highlights only some of the requirements of the statute at 25 U.S.C 1901 *et seq.* and regulations at 25 CFR 23. To the extent there are any discrepancies, the statute and regulations govern.

An emergency proceeding can be terminated by one or more of the following actions:

- (1) Initiation of a child-custody proceeding subject to the provisions of ICWA (e.g., providing notice);
- (2) Restoring the child to the parent or Indian custodian; or
- (3) The court transfers of the child to the jurisdiction of the appropriate Indian Tribe.

**Notice.** Provide clear and understandable notice to the parents (and/or Indian custodian, if any) and Tribe, by registered or certified mail, return receipt requested, of the involuntary proceeding, and maintain proof that the notice was given (i.e., the return receipts and copies of notice). The court will not hold a foster-care-placement or TPR proceeding until at least **10 days after receipt** of the notice of that particular proceeding (with extensions allowed at option of parent or Tribe).

**Standards of Evidence.** The court will order foster-care placement or TPR only if there is:

- **Clear and convincing evidence** (for foster-care placement) or **evidence beyond a reasonable doubt** (for TPR),
- Including the testimony of qualified expert witness(es),
- That the child's continued custody by the child's parent or Indian custodian is likely to result in "serious emotional or physical damage" to the child.

The evidence must show a **causal relationship** between the particular conditions in the home and the likelihood that continued custody of the child will result in serious emotional or physical damage to the particular child who is the subject of the child-custody proceeding.

Without a causal relationship, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself meet the standard of evidence.

The **qualified expert witness** may not be the social worker regularly assigned to the Indian child. The Indian child's Tribe may designate an individual as a qualified expert witness and you may seek the Tribe's or BIA's assistance in identifying a qualified expert witness.

**Placement Preferences.** Seek to identify placements that meet ICWA's placement preferences (or the Indian child's Tribe's placement preferences established by resolution, if applicable). The court will apply the placement preferences in any preadoptive, adoptive, or foster-care placement of an Indian child.

ICWA's top preferred placement is a member of the Indian child's extended family.  
For the remaining preferences, see 25 U.S.C. 1915 or 25 CFR §§ 23.129-131.

The court will allow for deviations of the placement preferences only for *good cause* described on the record. Good cause should be shown by clear and convincing evidence and based on one or more of the considerations at § 23.132(c). Note that a prerequisite to finding good cause based on the *unavailability* of a suitable preferred placement is that a diligent search for suitable preferred placements must have been conducted. The standards for determining whether a placement is *unavailable* must conform to the prevailing social and cultural standards of the Indian community.

A placement may not depart from the preferences:

- Based on the socioeconomic status of any placement relative to another placement
- Based solely on ordinary bonding or attachment that flowed from time spent in a non-preferred placement that was made in violation of ICWA.

\*Any proceeding that is not "voluntary" under the regulations is **involuntary**. A proceeding is "voluntary" only if either parent, both parents, or the Indian custodian has, of his or her or their free will, without a threat of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

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## Active Efforts



U.S. Department of the Interior, Bureau of Indian Affairs  
Final Rule: Indian Child Custody Proceedings  
25 CFR § 23.2, § 23.120

### What are active efforts?

Active efforts are affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family.

### What must active efforts involve?

Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent(s) or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.

### How should active efforts be provided?

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

### Are active efforts tailored to each case?

Yes, active efforts are to be tailored to the facts and circumstances of the case.

### When are active efforts required?

The active efforts requirement applies in any foster-care or termination-of-parental-rights proceeding involving an "Indian child" (see 25 CFR 23). The court must conclude, prior to ordering an involuntary foster-care placement or termination of parental rights, that active efforts have been made to prevent the breakup of the Indian family and that those efforts have been unsuccessful.

### Must active efforts be documented?

Yes, the court will require active efforts to be documented in detail in the record.

### Active efforts may include, for example:

- (1) Conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal;
- (2) Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
- (3) Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;
- (4) Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;
- (5) Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;
- (6) Taking steps to keep siblings together whenever possible;
- (7) Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
- (8) Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;
- (9) Monitoring progress and participation in services;
- (10) Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;
- (11) Providing post-reunification services and monitoring.

**IMPORTANT NOTE:** This quick reference guide is not comprehensive and highlights only some of the requirements of the statute at 25 U.S.C 1901 *et seq.* and regulations at 25 CFR 23. To the extent there are any discrepancies, the statute and regulations govern.

## APPENDIX C: ADDITIONAL RESOURCES

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