

# Foundation Block Field Activity: ICWA and Working with Native American Tribes

## *Learning Objectives*

### **Field Activity: ICWA and Working with Native American Tribes (1 hour)**

#### **Knowledge**

- K1.** Identify one ICWA designated agent, tribe, or Indian Service Agency in your county.
- K2.** Identify culturally relevant services and resources for Native American families in the community.

#### **Values**

- V1.** The trainee will value keeping an Indian child connected to culture and community.

## *Activity*

**Practice Area:** Foundation

**California Core Practice Model Practice Behaviors:** 4 (a-g), 5 (a-d), 8 (a-e), 10 (a-c), 12 (a-h)

**Estimated Time Required:** 1 hour

#### **Related eLearning/classroom:**

- Introduction to ICWA
- ICWA and Working with Native American Families and Tribes
- Federal and State Laws
- Legal Procedures
- Legal Procedures and Responsibilities

## **Description of Activity:**

This field activity will prepare the social worker for success in the field should they encounter an Indian child. This will be achieved by identifying local ICWA resources to support child welfare outcomes and will reinforce the value of keeping an Indian child connected to culture and community.

Through this activity the social worker will research and identify an ICWA designated agent for a tribe within their county, and identify culturally appropriate resources for a child and family served by the child welfare agency. As a reference for social workers and field advisors, please utilize the following link to access the BIA Designated Tribal Agents for Service of Notice document: <http://www.bia.gov/cs/groups/public/documents/text/idc012540.pdf>

The social worker and field advisor will review the information together and discuss how this relates to the purpose of the ICWA and the value of keeping a child connected to culture and community.

### Before the practice opportunity

**Prior to completing this field activity, the Field Advisor and the Social Worker should review the Purpose of ICWA and Tribal Sovereignty.**

The Purpose of ICWA is to: *“Protect the best interests of Indian children. Promote the stability and security of Indian tribes and families. Prevent the unwarranted break-up of Indian families. Protect the child’s relationship with their tribe and culture identity.”*



#### **Tribal Sovereignty and Child Welfare<sup>1</sup> Practice Tips for social workers to understanding government to government relations in ICWA cases.**

Sovereignty is a word of many meanings. Merriam Webster defines Sovereignty as a: supreme power especially over a body politic; b: freedom from external control: see autonomy; c: controlling influence<sup>2</sup>. Generally, the term refers to the inherent right or power to govern. Under the U.S. constitutional system, this right is inherent in the people and is exercised through their representative local, state, and federal governments. This is somewhat comparable to the inherent sovereignty of Indian people in the tribal context.<sup>3</sup>

As recognized by Congress, the executive branch, and the Supreme Court, tribes’ right to govern their members and remaining territories derive from a sovereignty that pre-dates European arrival. Treaties entered with tribes by the U.S. and other countries is one example of the longstanding relationship between the United States and tribes as sovereign nations.

The principal attributes of tribal sovereignty today can be generally summarized as follows: (1) Indian tribes possess inherent governmental power over all internal affairs, (2) the states are precluded from interfering with the tribes’ self-government, and (3) Congress has plenary (i.e., near absolute) power to limit tribal sovereignty and thereby limit the first two attributes.<sup>4</sup> The federal policy of tribal self-determination, with its beginnings in the 1930s and a renewal in the 1970s, had created opportunities for tribes to retain their sovereignty and to overcome some of the restraints arbitrarily or improperly placed on that sovereignty over the past 150 years<sup>5</sup>.

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<sup>1</sup> This document was developed by the American Indian Enhancement team in collaboration with the National Resource Center for Tribes, and Tribal STAR with technical support from the Hon. William Thorne. The American Indian Enhancement Team is an effort of the California Disproportionality Project, a Breakthrough Series Collaborative (BSC) resourced through the Annie E. Casey Foundation, California Department of Social Services, CalSWEC, Casey Family Program, Child and Family Policy Institute of California, and the Stuart Foundation. Revised 11/2015.

<sup>2</sup> Sovereignty. 2009. In *Merriam-Webster.com*. Retrieved July 15, 2009, from <http://www.merriam-webster.com/dictionary/sovereignty>

<sup>3</sup> Utter, Jack, *American Indians: Answers to Today’s Questions: H-8s: Legal Status and Tribal Self-Government* 1993

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*



Social workers who have American Indian/Alaska Native children on their case load may be unaware that the Indian Child Welfare Act applies to their case or of the affect the law and tribal sovereignty may have on their case. Why is there a law that specifically targets American Indian children in child welfare? Why aren't there other laws that address the needs of other groups such as African Americans or Hispanic/Latinos? Simply put, being American Indian is not only a cultural distinction; it is also a political one. The United States has a government-to-government relationship with American Indian/Alaska Native tribes and through that relationship has the obligation to protect the best interests of American Indian children and to promote the stability and security of Indian tribes and families<sup>6</sup>

Tribes exercise their sovereignty in *many ways*, including designating ICWA representatives to receive notice from state child welfare agencies and state courts; appointing an ICWA representative in order to ensure that the tribe is informed and can respond to the notice; defining expert witness criteria, and recommending Tribal Customary Adoption as a permanency option for its children.

#### **Tips for Social Workers**

1. Learn about the tribe(s) in your county and state. You can obtain a copy of ICWA designated agents at <http://www.tribal-institute.org>.
2. Be aware that when a tribe intervenes in an ICWA case involving their child, the tribe is then a party to the case and legally entitled to the same rights as all other parties to the case.
3. In cases where the child's tribe is geographically too far to participate in the court process the tribe may designate a representative to appear in court on the tribe's behalf.
4. If the child's tribe does not intervene in a case or assume jurisdiction, the case continues to maintain ICWA status and culturally appropriate active reunification services are still required.
5. Tribes exercise sovereign status in many ways, including during Tribal Customary Adoption, and to define criteria for expert witness.

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<sup>6</sup> 25 U.S.C. §1902



6. 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.
7. 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.
8. Attempt to resolve the case informally before having to resolve the case before a judge.

For additional information, please visit the Implementation Toolkit for the American Indian Enhancement Project on the CalSWEC website: <http://calswec.berkeley.edu/toolkits/implementation-toolkit-american-indian-enhancement-project/american-indian-fact-sheets>

### **Field Advisor Responsibility:**

*Note for the Field Advisor – This activity may take longer the first time it is completed, as it is expected that the field advisor have some level of knowledge about ICWA protocol and resources. The field advisor is encouraged to create and maintain an ICWA file to be used for the activity in the future.*

- ❑ Identify and make copies of any county-tribal protocol, county-tribal MOUs, or any list of internal ICWA liaisons or specialists.
- ❑ Review list of federally recognized and state recognized tribes within the county and the associated designated agents.
  - BIA Designated Tribal Agents for Service of Notice document:  
<http://www.bia.gov/cs/groups/public/documents/text/idc012540.pdf>
- ❑ Field advisors are encouraged to research culturally appropriate resources for American Indian/Alaska Natives in the county and create a list (if one is not already available in the county) that can be shared with the trainee and used to support social work practice.. This may include, but is not limited to, Indian Health Services, Tribal TANF, Title VII Indian Education programs, American Indian workforce programs, and other social service agencies for American Indians.
- ❑ Review the field activity with the social worker. Check that they understand the tasks completely.
- ❑ Discuss how the field activity relates to the purpose of the Indian Child Welfare Act.
- ❑ Guide the social worker to consider the implications, challenges, and accessibility of resources should they identify an Indian child on their caseload.
- ❑ Encourage the social worker to learn additional information about the tribe, if possible, and time permits.
- ❑ Provide information to the social worker about where to locate the county-tribal protocol, county-tribal MOUs, and any list of internal ICWA liaisons or specialists (if applicable).

### **Social Worker Responsibility:**

- ❑ Review field activity knowledge and value objectives.

### **During the practice opportunity**

#### **Social Worker Responsibility:**

- ❑ Locate and review:
  - County-tribal protocol,
  - County-tribal MOUs (Memorandum of Understanding)
  - Any list of internal ICWA liaisons or specialists (if applicable)

The social worker should note where these ICWA resources are located or print the items listed above for future use.

- ❑ Identify federal and state recognized tribes within the county and their associated ICWA designated agent. Document the address for purpose of notice and physical location. Create a map with driving or travel directions to visit the tribe and the ICWA designated agent. Document all contact information necessary should the social worker identify an Indian child from this tribe within their caseload.
  - BIA Designated Tribal Agents for Service of Notice document: <http://www.bia.gov/cs/groups/public/documents/text/idc012540.pdf>
- ❑ If there are no federal or state recognized tribes within the county, the social worker should locate the nearest CA tribe for the purposes of this activity.
- ❑ Identify at least 1 American Indian service agency in the county or region that provides services to Indian children and families. This may include, but is not limited to: Indian Health Service, Tribal TANF, Title VII Indian Education, Indian workforce development or any social services that serve American Indians/Alaska Natives specifically. Document the address for purpose of notice and physical location. Create a map with driving or travel directions to visit the organization. Document all contact information necessary should the social worker identify an Indian child from this tribe within their caseload.
- ❑ If there are no American Indian service agencies within the county, the social worker should locate the nearest American Indian services program for the purposes of this activity.

### After the practice opportunity

#### Field Advisor Responsibility:

- ❑ Ask the social worker to share the information they obtained.
- ❑ Discuss with the social worker any challenges they would anticipate in providing services to an Indian child.
- ❑ Review the information with the social worker and ask how these relate to the purpose of ICWA? California's Practice Model, and best practices?
- ❑ Review with the social worker that Active Efforts begin immediately when they have reason to believe they have an Indian child in their care and that the California Practice Model supports engagement and teaming with tribes.
- ❑ Encourage the social worker to create a file to maintain resource information related to ICWA.

#### Social Worker Responsibility:

- ❑ Create and maintain an ICWA file to contain:
  - Tribal contact information.
  - County protocol
  - List of ICWA specialists & resources

- ❑ Reflect on the activity:
  - What did you learn from the activity?
  - How will you use what you learned from the activity?
  - What additional information or resources would be helpful when you identify an Indian child?
  - What questions do you still have?
- ❑ Discuss with the field advisor how identifying the information in the activity relates to the purpose of ICWA? California’s Practice Model, and best practices?
- ❑ Ask any clarifying questions.