Segment 1

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

Maria Antonia Payo & daughter
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Segment 1

Welcome!

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

Opening
Introductions
Housekeeping

Indian Boy

Goals for Training

The ASFA goals of child safety, child well-being, and permanence are addressed in this training.

Permanency 1
Children have permanency and stability in their living situations without increasing reentry to foster care.

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

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

"Let us put our minds together and see what life we can make for our children."
--Chief Sitting Bull, Lakota
Knowledge

K1. The participant will cognitively and emotionally understand culturally-centered child welfare social work practice, including how respecting American Indian history, culture, values, traditions, and relationships promote positive outcomes for Indian youth and families.

K2. The participant will comprehend the Indian Child Welfare Act of 1978, a policy and practice established to protect the best interests of Indian children, and its historical and national importance relevant to current child welfare practice.

K3. The participant will understand the critical role in practice of the child welfare worker and supervisor by taking steps to identify who is an Indian child and following established guidelines for inquiry, noticing, placement, active efforts, concurrent planning, and use of expert witnesses.

K4. The participant will recognize the issues of fairness, equity, and disparities experienced by American Indian/Alaska Native children and their respective families within the child welfare system.

Skills

S1. The participant will demonstrate how to share who they are and their cultural origins as a means toward effectively engaging in trust relationships with Indian people.

S2. The participant will be able to describe the historical background that led to the passage of ICWA with recognition that serving the “Spirit of ICWA” is as important as the law itself.

S3. The participant will be able to describe the basic requirements of ICWA, including who determines who is an Indian child, the role of the Tribes and Courts, and the critical role of the child welfare worker.

S4. The participant will be able to fulfill the ICWA requirement of Inquiry and Notice and assess if a child is American Indian/Alaska Native in a culturally appropriate manner.

Values

V1. The participant will value Indian cultural knowledge and its critical role in child welfare practice to meet the “Spirit of ICWA”.

V2. The participant will value collaboration with Indian cultural resources, Tribal youth and families, Tribal experts, child welfare colleagues, attorneys, and judges to better meet ICWA requirements in the best interest of the Indian child.

V3. The participant will recognize the value of attention to their own cultural background and perspectives in working with Indian children and families to increase effectiveness in their child welfare social work practice.

V4. The participant will value accurate data entry and updating of data regarding Native American ancestry and ICWA status in the statewide child welfare database.
**Historical Context and Perceptions**


"Made by the same Great Spirit, and living in the same land with our brothers, the red men, we consider ourselves as the same family; we wish to live with them as one people, and to cherish their interests as our own."

—Thomas Jefferson: To the Miami, Potawatomi, and Weeauki

"The more we can kill this year, the less will have to be killed the next war, for the more I see of these Indians, the more convinced I am that they will all have to be killed or be maintained as a species of paupers."

—William Tecumseh Sherman

"When the last Red Man shall have perished, and the memory of my Tribe shall have become a myth among the white men, these shores will swarm with the invisible dead of my Tribe, and when your children's children think themselves alone in the field, the store, the shop, upon the highway, or in the night when the streets of your cities are silent and you think them deserted, they will throng with the returning hosts that once filled them and still love this beautiful land. The White Man will never be alone."

—Chief Seathl of the Duwamish
Clan Activity
Each Clan to identify individuals to fill the following roles:
• Spokesperson
• Timekeeper
• Scribe
• Spiritual Person
• Up and Comer
• Activist
• Advocate

Moiety: two halves of a whole
Non-predators
Predators
Turtle
Wolf
Deer
Bear
Crow
Eagle

Current Challenges
Why are cases being turned back by the courts?

What do we want to gain from today?
“You don’t know where you are going until you know where you came from.”

How did the ICWA come about?

American Indian Policy Review Commission established by Congress in 1976

- Task Force Four dealt with issues of federal, state, and Tribal jurisdictions.
- A section of their final report to Congress outlines the need for what was to become the ICWA.

Findings from the Report

- Decisions made about Indian children were biased when made by non-Indian authorities.
- 25% to 35% of all Indian children were removed and raised at some time in non-Indian homes and institutions.

(Report on Federal, State, and Tribal Jurisdiction, 1976, p. 79)
A Curious Paradox

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

(Report on Federal, State, and Tribal Jurisdiction, 1976, p. 79)

Cheyenne Mother & Child

More Findings from the Report

1. That Indian children are the most vital resources for the continued existence of Indian Tribes and therefore must be protected;
2. That an alarmingly high percentage of Indian families are broken up by removal, often unwarranted, of children by public and private agencies, and that an alarmingly high percentage of such children are then placed in non-Indian homes and institutions; and
3. That the States have failed to recognize the tribal, social, and cultural standards prevailing in Indian communities and families.

The Act was passed to remedy these findings!
The Bureau of Indian Affairs Apology
(Vide)• From 1997-2001, Kevin Gover served as Assistant Secretary of the Interior for Indian Affairs. He concentrated on upgrading Indian law enforcement, rebuilding decrepit Indian schools, reforming trust services, and overhauling the Bureau of Indian Affairs’ management systems.
• A member of the Pawnee Tribe of Oklahoma, Mr. Gover serves as a judge for the Tonto Apache Tribal Court of Appeals and the San Carlos Apache Tribal Court of Appeals, and is on the governing boards of several non-profit educational institutions.
• Since 2007, Mr. Gover has served as director of the Smithsonian Institution’s National Museum of the American Indian.

Where are we now?
Since ICWA was enacted almost four decades ago, the struggle to keep Indian families together continues. Native American children are still more likely to be removed from their homes and communities than other children (U.S. Department of Justice, 2014). This is in part due to ineffective or inconsistent implementation and compliance of the ICWA.

Areas of non-compliance:
• Failing to identify and protect ICWA-eligible children early on
• Providing inadequate or no notice of proceeding to Tribes and parents
• Placing children outside their family and away from the community without good cause, or placing children in a more restrictive setting than necessary

Where are we now? (cont’d)
Reasons for non-compliance may include:
• Lack of enforcement on behalf of both state courts and child welfare or adoption agencies
• Inadequate training and shared understanding
• Willful ignorance of ICWA rules and implementation
• Bias and ignorance of Native Americans/Alaska Natives culture and Tribal sovereignty
• Difference in definitions and methods used to measure compliance
Where are we now? (cont’d)

In its effort to improve the implementation of the ICWA, the U.S. Department of the Interior BIA released the Guidelines for State Courts and Agencies in Indian Child Custody Proceedings which took effect February 25, 2015 and supersede and replace the guidelines published in 1979. To address failures in compliance, the BIA also released 25 CFR Part 23 Indian Child Welfare Proceedings: Final Rule on June 14, 2016.

The ICWA Guidelines (2015) and regulations (2016) provide and intend to:

- Promote early identification of ICWA applicability and proper notification
- Clearer definition of key terms and examples for what are “active efforts” (see section A.2 of the revised ICWA Guidelines)
- Promote ICWA rights of children, parents and Tribal sovereignty
- Establish that agencies and courts should diligently document their efforts to comply with ICWA

Where are we now? (cont’d)

The California Department of Social Services, in its effort to improve state and county compliance with the ICWA requirements, updated and released Division 31 Regulations (2016), which effective October 1, 2016 comprehensively incorporates requirements under Senate Bill (SB) 678, Chapter 838, Statutes of 2006 and language from the revised ICWA guidelines (2015).

Break

10 Minutes

Omaha Boys in Cadet Uniforms at Boarding School

"...what there is no measure 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, otherwise in protecting Indian children who are members of or are eligible for membership in an Indian Tribe..."

(Indian Child Welfare Act of 1978, § 1901 (3)
Segment 3

ICWA Groundwork:
Policy & Practice

Policy:
• Who is an Indian child?
• What is an Indian Tribe?
• What is blood quantum and who is eligible for enrollment?

ICWA Groundwork:
Policy & Practice

Practice:
• Who determines that a child is Indian?
• At what point in the proceeding is a child considered an Indian?
• How do courts come to know a child is Indian?
• At what point does the Act come into play?

What is the purpose of the Indian Child Welfare Act?

“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.”

Indian Child Welfare Act of 1978, § 1902
When does the Act apply?

1. Foster care placements
2. Termination of parental rights
3. Preadoptive and Adoptive placement
4. ICWA best practice guidelines requires that the Act apply even during voluntary termination of parental rights.

5. Juvenile delinquency proceeding (if the need to place the child in foster care rises)

(ICWA regulations, 2016, § 23.103 (a); ICWA Guidelines 2015 Sec A.3)

When does the Act not apply?

- The Act does not apply to a placement based upon an act, which, if committed by an adult, would be a crime (25 U.S.C. 1903(1) (iv); ICWA guidelines, 2015, Sec. A.3(e)(2))
- The Act does not apply to an award in a divorce proceeding, if custody is granted to one of the parents (25 U.S.C. 1903(1) (iv); ICWA guidelines, 2015, Sec. A.3(e)(3)).
- The Act does apply in delinquency proceedings, however, if the child is being temporarily or permanently removed from the family home because of protective issues in the home, rather than the conduct of the child, ICWA does apply.

Practice Tip

- To follow the Spirit of ICWA requires broadening the definition of what it means to be a Tribe. For example, even if a Tribe is non-federally recognized, it is in the best interest of the county and state to follow ICWA.
- Research has determined that culturally centered practice will result in a reduction of the number of times an individual enters public systems and ultimately reduces the burden of cost.
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 or citizen of an Indian Tribe, or
• eligible for membership or citizenship in an Indian Tribe and is the biological child of a member/citizen of an Indian Tribe (ICWA regulations, 2016, § 23.2; ICWA guidelines, 2015, Sec. A.2; Division 31 regulations 31-002 (I)(3)(A))

Who is an Indian child? (cont’d)

Division 31 regulations (2016) explains:

Where the Indian Child’s dependency case continues beyond age 18, the child will continue to be defined an Indian child up to age 21, in which case ICWA standards will continue to apply unless the child or an attorney on the child’s behalf, to [sic] chooses to no longer be defined as an Indian child.

(Sec. 31-002 (I)(3)(A)(1))

How much Indian (blood quantum) must a child be in order to be considered Indian?

There is no set blood quantum. Some Tribes require a child to be 1/8, 1/4, 1/2, 5/8, etc., in order to be enrolled. Other Tribes require only that a child be able to trace lineal descent. In order to know about a particular child, it is imperative that the Tribe be notified so that the Tribe can make a determination.
What is an Indian Tribe?

“[A]n ‘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…”

(Indian Child Welfare Act of 1978, § 1903(8))

Practice

Who determines that a child is Indian?
The only entity that can determine whether a child is a member of a Tribe, or eligible for membership, is the Tribe.

(ICWA Regulations, 2016, § 23.108 (a); ICWA Guidelines Sec. B.3)

At what point is a child considered to be Indian and the case an Indian Child Welfare Act case?

Agencies and State courts, in every child custody proceeding, must ask whether the child is or could be an Indian child and conduct an investigation into whether the child is an Indian child. (d) If there is any reason to believe the child is an Indian child, the agency and State court must treat the child as an Indian child, unless and until it is determined that the child is not a member or is not eligible for membership in an Indian Tribe (also referred to as the “spirit of ICWA”).

(ICWA Regulations, 2016, § 23.103 (c-d))
How do courts come to know a child is Indian?

The court knows or comes to know by asking if the child is Indian in every case that is referred and which may result in an involuntary proceeding. (This means whenever the court is seeking foster care, preadoptive, placement or termination of parental rights or adoption).

At what point does the Act come into play?

The case is treated as an Indian case immediately, if there is any indication that the child may be Indian, and the Act must be applied. At the same time, efforts need to be made to notify the Tribe and to determine eligibility of the child.

What actions can the Tribe take at this point?

- The Tribe may decide to intervene
- If the Tribe has a court, they may decide to petition for transfer of jurisdiction
What happens if the Tribe does not intervene or take jurisdiction?

• Whether the Tribe petitions to intervene or not and whether the Tribe petitions to take jurisdiction or not, the case must still be treated as Indian and all the provisions of the Act followed.

What if the Indian child is not enrolled?

• It is not necessary for the child to be enrolled. It is only necessary to establish that the child is eligible for enrollment or is considered to be a member of the Tribe.


Segment 4

Segment 4

Grief and Loss Activity

• How important are children in your culture?
• How important is family?
Segment 5

**Boarding School Experience**

- 500 Nations
- What did we learn?
- How does this impact social work today?

Segment 6

**Importance of Culture**

<table>
<thead>
<tr>
<th>American Indian Values</th>
<th>Anglo-American Values</th>
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</thead>
<tbody>
<tr>
<td>Permissiveness</td>
<td>Coercion</td>
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<tr>
<td>Extended Family</td>
<td>Nuclear Family</td>
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<tr>
<td>Cooperation with concern for the group</td>
<td>Competition and self-reliance</td>
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<tr>
<td>Non-materialistic</td>
<td>Materialistic</td>
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<td>Non-aggressive</td>
<td>Aggressive</td>
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<tr>
<td>Modesty</td>
<td>Over-confidence</td>
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<tr>
<td>Compact Living Space</td>
<td>Noise</td>
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Adapted from work prepared by the Indian Child Abuse and Neglect Resource Center, Tulsa, Oklahoma
General Principles of Interpersonal Relationships

Principle of self-reliance
American Indians generally prefer to be self-reliant and may be hesitant to ask for or receive help. This is often interpreted by a social worker as belligerence and stubbornness. It also confirms the tendency of the American Indians not to seek help until the absolute last minute of an emergency.

Principle of non-interference
Most American Indian groups consider interference in others' lives as a sign of disrespect. They generally practice the "live and let live" philosophy, allowing others to make their own mistakes and decisions. They expect the same to be afforded to them. Thus, when a social worker intervenes in the life of a family, it is interpreted by many Indians as an act of disrespect, a threat, or an insult. However, support and assistance from a perceived member of the extended family is not considered interference.

Principle of non-confrontation
Many American Indians prefer not to confront people when they disagree with them. Instead, they will avoid them. If a social worker tells Indian parents they must take their children to school, the parents may be very agreeable and compliant, but once the social worker is gone, they may simply refuse to comply. Often this behavior is interpreted as belligerent, stubborn, non-cooperative, and immature. It is important to understand this dynamic in interpersonal relations.
Principle of diversity

Diversity is a principle that American Indians understand and respect. It is important that non-Indian social workers understand this to avert cultural misunderstanding that comes from inappropriately overgeneralizing American Indian families, children, and communities into one large group or definition. Having this understanding is key to providing services that meet the unique needs of children and families.

Principle of respect for Elders

American Indians traditionally revere Elders in their society. It is believed that Elders have a broader perspective of life because they have had a longer life experience and more time to adhere to the philosophical constructs of their society. Thus, it would be difficult for a young social worker to be accepted if he or she patronizes an older Indian client.

Principle of extended family

The kinship bonds in most American Indian groups extend beyond the blood relatives on both sides to non-related friends and members of the Tribe or Clan.

(Orrantia, M., 1991, p. 37. [Adapted from work prepared by the Indian Child Abuse and Neglect Resource Center, Tulsa, Oklahoma])
Segment 7

• Who are your people?
• Where are your people from?
• Describe your family and where they live.
• Share with your Clan.

Other changes affecting ICWA

• Traditional Customary Adoption AB1637
• Spirit of ICWA document
• Fairness, equity, and disproportionality
• Tribal certification of foster homes

Panel of Local Tribal Experts

500 Nations: Part II
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."

—The Indian Child Welfare Act

Inquiry and Noticing

• Many children who are eligible for the protection of the ICWA are of mixed racial heritage.
• In the Southwest many Indian families have Spanish surnames—the Spanish were the first conquerors.
• Do not assume that a child is not Native American/Alaska Natives member/citizen based on the child’s physical appearance, or because the surname would indicate a different ethnic group.
Division 31 regulations (2016) implement the inquiry process as follows:

In all cases the social workers shall inquire of the child, if the child is old enough, the child’s parent(s), legal guardian(s), or the child’s Indian custodian, whether the child is or may be an Indian child and complete the Judicial Council Indian Child Inquiry attachment form. Social workers have an affirmative and continuing duty to inquire about a child’s Indian status. (Sec. 31-125.223)

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

Remember the only way to establish that a child is Indian is to ask the child, the mother, father, grandparents, custodian, or guardian of the child if the child is, or may be, Indian.
Guidelines to Help Identify and Document an Indian Case

1. At intake, ask if the child may be of American Indian heritage.
2. If the answer is affirmative, immediately treat the case as an ICWA case.
3. Ask if the child is going to be placed in foster care (before the child is removed, make sure that all “Pre-placement preventive services,” which require “active efforts,” are carried out and recorded as indicated in Division 31 regulations Sec. 31-002 (p) (b), 31-525, & 31-135.23).
4. Upon indication by the child, mother, father, grandparent, or Indian custodian indicating that the child may be Indian, obtain the information needed to develop a family tree.

Guidelines to Help Identify and Document an Indian Case (cont’d)

5. Establish from what tribe the child may be, and what reservation.
6. Obtain enrollment numbers, tribal telephone numbers, and addresses.
7. If the child is eligible for membership, but not yet a member of any tribe, agencies should take the necessary steps to obtain tribal membership for the child (ICWA guidelines, 2015, Sec. B.4.I.F.).

Practice Tip

Note that 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.
The Notice Process

What do I need to do to insure proper noticing?

Agencies are required to notify all Tribes in which the child is a member or is eligible for membership that the child is involved in a child welfare proceeding.

(Division 31 regulation, 2016, §31-125.7; ICWA regulations, 2016, § 23.111, § 23.111 (a) (1); ICWA guidelines, 2015, Sec. B.4.a)

Who needs to be notified besides the Tribe?

- Parent(s) or Indian custodian (if applicable) and
- Any agents for the Tribe who may be designated by the Tribe as agents, e.g., Indian organizations, etc.
- Social workers are also authorized to inform a non-federally recognized Tribe that the Tribe may seek permission to participate in the child's dependency case
- In California the Secretary of the Interior must also receive a copy of notice even when the Tribe is known

(ICWA regulations, 2016, § 23.111; ICWA guidelines, 2015, Sec. B.6; Division 31 regulation, 2016, sec. 31-125.7 & 31-125.225)

How are they to be notified?

Notice shall be sent by registered or certified mail with return receipt requested. Additional notice by first-class mail is recommended but not required. However, this could help support active efforts.

(Division 31 regulation, 2016, Sec. 31-125.7.7)
The Importance of Accurate Data Entry and Data Updates in CWS/CMS

Race, ICWA Eligibility, and Tribal Status

Skill-building Activity


Maintaining the culture.

Two Indian men making rope.

Segment 9

Who is extended family?

“Extended family member” shall be defined by the law or custom of the Indian child’s Tribe or, in the absence of such a law or custom, shall be a person who has reached the age of 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.”

(Indian Child Welfare Act of 1978, § 1903 (2))

Order of Preference for Foster Care or Preadoptive Placement

The following placement preferences apply in any foster care or preadoptive placement of an Indian child: (a) Child must be placed in the least restrictive setting that: (1) most approximates a family; (2) allows his or her special needs to be met; and (3) is in reasonable proximity to his or her home, extended family, and/or siblings. (b) Preference must be given, in descending order as listed below, to placement of the child with:
Order of Preference for Foster Care or Preadoptive Placement (cont’d)

- A member of the Indian child’s extended family;
- A foster home, licensed, approved, or specified by the Indian child’s Tribe, whether on or off the reservation;
- An Indian foster home licensed or approved by an authorized non-Indian licensing authority;
- An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the child’s needs

(ICWA guidelines, 2015, Sec. F.3)

For Adoptive Placement

The ICWA guidelines for placement of adoptive children are as follows: (a) in any adoptive placement of an Indian child under State law, a preference must be given in descending order, as listed below, to placement of the child with:

1. A member of the child’s extended family;
2. Other members of the Indian child’s Tribe; or
3. Other Indian families, including families of unwed individuals.
(b) The court should, where appropriate, also consider the preference of the Indian child or parent (ICWA Guidelines 2015 Sec F.2)

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

Can a different order of placement be used?

Before there is a deviation from the placement preferences, the court must determine that there is “good cause” to do so (ICWA regulations, 2016 § 23.132 (b); ICWA guidelines, 2015, Sec.F.4).

In which case “good cause” exists, “...the agency must demonstrate through clear and convincing evidence that a diligent search has been conducted to seek out and identify placement options that would satisfy the placement preferences... and explain why the preferences could not be met” (ICWA Regulation, 2010, § 23.132).
What standards are used in applying preference requirements?

“[The] standards to be applied in meeting the preference requirements...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.”

(Indian Child Welfare Act of 1978, § 1915 (d))

What about emergency removal?

- Emergency removals of Indian children should be severely limited, applying only in circumstances involving imminent physical damage or harm of the child.
- If it is known, or there is reason to know, that the referral involves an Indian child, the social worker shall contact the designated representative of the child’s Tribe, so that Active Efforts to prevent the breakup of the Indian family can be commenced and coordinated by the social worker.
- If there is imminent danger of physical damage or harm to the child and immediate removal is required, contact must be made with the designated representative of the child’s Tribe as soon as possible thereafter.

(ICWA regulations, 2016, § 23.113)

When must the Indian child be returned who was removed in an emergency?

If an emergency removal and emergency placement is necessary to prevent imminent physical damage or harm to the Indian child, it should be as short as possible [when the threat is no longer there] [bold added].

(Division 31 regulations 31-115.212)
Under what conditions may a child be placed in foster care or parental rights terminated?

"Any party petitioning a State court for foster care placement or termination of parental rights to an Indian child must demonstrate to the court that prior to, and until the commencement of, the proceeding, active efforts have been made to avoid the need to remove the Indian child from his or her parents or Indian custodians and show that those efforts have been unsuccessful."

(ICWA Guidelines 2015, Sec. D.2a)

Levels of Burden of Proof

1. Preponderance of evidence
2. Clear and convincing
3. Beyond a reasonable doubt

"The court must not order a foster-care placement of an Indian child unless clear and convincing evidence is presented, including the testimony of one or more qualified expert witnesses, demonstrating that the child's continued custody by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child."

(ICWA Regulations 2016 § 23.121(a))
Burden of Proof for Termination of Parental Rights

“The court must not order a termination of parental rights for an Indian child unless evidence beyond a reasonable doubt is presented, including the testimony of one or more qualified expert witnesses, demonstrating 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.”

(ICWA Regulations, 2016 § 23.121(b))

What are the parent's rights when voluntarily consenting?

Division 31 regulations (2016) adhere to ICWA’s regulations and guidelines as follows:

• If the voluntary placement is of an Indian child, the consent to the placement shall be the written consent of a parent or Indian custodian and comply with the following:
  • The consent must be recorded no less than ten days after the birth of the child, in the presence of the judge of the Superior Court on SOC form 155C.
  • The judge must certify that the terms and consequences of the consent were fully explained in detail and that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language the person understood; and
  • The parent or Indian custodian is informed that consent may be withdrawn for any reason at which time the child must be returned to the parent or Indian custodian.

(Sec. 31-430.2)

Diomede girl

What are the parent's rights when voluntarily consenting? (cont’d)

• The judge must certify that the terms and consequences of the consent were fully explained in detail and that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language the person understood; and

(Sec. 31-430.2)
Activity

Clan Members:

1. Write the order of placement for a foster care or preadoptive placement.

2. Write the order of preference for an adoptive placement.

Segment 10

Active Efforts vs. Reasonable Efforts

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


Active Efforts vs. Reasonable Efforts

• A rule of thumb is that “active efforts” is to engage the family while “reasonable efforts” simply offers referrals to the family and leaves it to them to seek assistance.
What is the definition of “Active Efforts?”

“Active Efforts mean,” in the case of an Indian child, those efforts intended primarily to maintain and reunite an Indian child with his or her family or Tribal community and includes all actions taken by a county to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. Active Efforts must take into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s Tribe and utilize the available resources of the child’s extended family, Tribe, Tribal and other Indian social service agencies, and individual Indian caregiver service providers.

(Division 31 regulation, 2016, 31.002)

When do “Active Efforts” begin?

“Active Efforts begin as soon as there is a possibility that the Indian child may be removed from the home. This is to ensure that pre-placement preventive services or remedial and rehabilitation programs are put in place right away to prevent the breakup of the Indian family.”

(Division 31 regulations, 2016, Sec. 31.002 (p)(8) & 31.135.23)

When do “Active Efforts” apply?

The social worker must employ “Active Efforts” in all the stages of the child’s case, for example:

- When providing services to prevent removal
- When deciding on a foster care placement
- When providing remedial, maintenance, reunification, and rehabilitative services
- When the child receives out-of-home care that’s not consistent with ICWA placement preference standards

In addition, social workers must document all “active efforts” taken and whether these efforts were proved unsuccessful in fulfilling ICWA requirements.
Concurrent Planning:
Questions to Consider

1. How should the agency and the court approach concurrent planning in an ICWA case?
2. How involved should the child’s Tribe be in concurrent planning?
3. What unique considerations are there in permanency planning for Indian children?
4. What different permanency options should be considered for Indian children?
CWS/CMS: Update ICWA Data

Reminder to Update Data Regarding Race, ICWA Eligibility, and Tribal Status

Personal Activity

Clan members: Write a few words in your workbooks to help you remember what is important about concurrent planning.

Little girl standing in field holding ball

Break

10 Minutes

Omaha Boys in Cadet Uniforms at Boarding School

"...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..."

—The Indian Child Welfare Act

Segment 12

Expert Witness

What does “Expert Witness” mean?

"Qualified expert witness’ means a person required to testify in an Indian child custody proceeding on whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child."

(Division 31 regulations, 2016; 31-002 (q))
When must qualified expert witness be used?

Qualified expert witnesses must be used in proceedings involving involuntary removal of an Indian child from his or her home and during termination of parental rights.

Expert witness: involuntary removal

“If the child is an Indian child, involuntary removal from the parent or Indian custodian or placement out of the home must be supported by clear and convincing evidence that the continued custody of the child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the child. The determination of emotional or physical damage to the child must be supported in court by the testimony of a qualified expert witness.”

(Division 31 regulations, 2016, Sec. 31-135.42)

Expert witness: Termination of Parental Rights

“In termination of parental rights proceedings, a qualified expert witness is required to provide testimony ‘beyond a reasonable doubt’ that the child would suffer serious emotional or physical harm if returned to parental (or Indian custodian) custody.”

(Division 31 regulations, 2016, Sec. 31-201.12)
What must a qualified expert do?

A qualified expert is a person who can address the issue of whether continued custody by a parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The purpose of the qualified expert witness is to provide testimony on the issue of detriment to the child.

What are expert witness qualifications?

SB 678 specifies that, provided the individual is not an employee of the person or agency recommending the foster care placement or termination of parental rights, a qualified expert witness may include, but is not limited to, a social worker, sociologist, physician, psychologist, traditional Tribal therapist and healer, Tribal spiritual leaders, Tribal historian, or Tribal Elder. County social workers are disqualified from being expert witnesses in the same county where they are employed.

What characteristics must expert witnesses possess?

The ICWA regulations (2016) provide a list of characteristics expert witnesses must possess followed in the descending order indicated below.

- A member of the Indian child’s Tribe who is recognized by the Tribal community as knowledgeable in Tribal customs as they pertain to family organization and childrearing practices.
- A member of another Tribe who is recognized to be a qualified expert witness by the Indian child’s Tribe based on their knowledge of the delivery of child and family services to Indians and the Indian child’s Tribe.
What characteristics must expert witnesses possess?
(cont’d)

- A layperson who is recognized by the Indian child’s Tribe as having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and childrearing practices within the Indian child’s Tribe.
- A professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of the prevailing social and cultural standards and childrearing practices within the Indian child’s Tribe. (§ 23.122(b))

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When should an expert witness be contacted?
It is helpful if the petitioner identifies the expert witness, or witnesses, upon initial contact with the child and solicits such witnesses from the Tribe.

Link to list of expert witnesses Statewide:
http://www.courts.ca.gov/8105.htm
What issues does the expert witness address?

The purpose of expert witness testimony is to provide the court with information about the social and cultural aspects of Indian life in order to diminish the risk of any cultural bias.

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What issues does the expert witness address? (cont’d)

• Was the child in imminent danger at the time of removal and did that removal take place without remedial services to prevent it?
• Are decisions being unduly influenced by inappropriate cultural biases?
Were there active efforts to prevent out of home placement?
This requires the provision (or offer) of culturally appropriate remedial services and rehabilitative programs designed to prevent the break-up of the family.

What issues does the expert witness address? (cont’d)

Were there active efforts made to provide appropriate reunification services?
This requires active efforts to identify and provide (or offer) culturally appropriate services. Were efforts ‘token’ or ‘active’?

Personal Activity

Clan Members:
Write a few words in your workbook that will help you remember what is important about expert witness.
The term “Tribal” as identified in the Act does not have the same significance as being “Tribal” in a historical context. Many Tribes are ‘unrecognized’ yet still function as Tribes, maintaining their own culture, ceremonies, language, traditions and systems of government.

Research shows that Tribal youth who maintain connections to their families and culture demonstrate better outcomes.

The Spirit of ICWA is to ensure access to culturally appropriate services and facilitate ties between the child, extended family, and Tribe, regardless of whether or not the Tribe is federally or state recognized. Review the fact sheet “Following the Spirit of ICWA” that explains the reasons for implementing ICWA with non-recognized Tribal members. (The fact sheet was developed with the Administrative Office of the Courts and the Breakthrough Series Collaborative of the California Disproportionality Project.)
Review why ICWA cases were being turned back or appealed

How does this relate to the Spirit of ICWA?

Black Elk, Holy Man of the Oglala Sioux

"Then I was standing on the highest mountain of them all, and round about beneath me was the whole hoop of the world. And while I stood there I saw more than I can tell and I understood more than I saw, for I was seeing in a sacred manner the shapes of all things in the spirit, and the shape of all shapes as they must live together like one being. And I saw the sacred hoop of my people was one of the many hoops that made one circle, wide as daylight and as starlight, and in the center grew one mighty flowering tree to shelter all the children of one mother and one father. And I saw that it was holy..."

(From Black Elk Speaks, 1932, William Morrow & Company)

Segment 14

Wrap Up, Evaluation, and Talking Circle

Review list of what participants wanted to gain from today.
Clan Members: Complete evaluation survey and other forms.

Stepping into the Circle
- Clan members help form and then join the circle.
- Every individual participates; some can choose not to speak.
- When someone else is speaking, it is our turn to listen.
- This is our time to speak our thoughts, and our truth from our hearts.
- The process is not complete until everyone has participated.

Thank you...
for working to ensure that outcomes improve for Native American foster children and youth!