Bay Area Academy Core Training

Indian Child Welfare Act (ICWA)

Learning Objectives

- To recognize the historical trauma and distrust experienced by Indian/Native American people and the associated implications for helping relationships, particularly engagement with Indian/Native American families.

- To recognize the historical, philosophical, and legal basis for the Indian Child Welfare Act (ICWA).

Learning Objectives

- To recognize the concept of Tribal sovereignty and the government to government relationship between Tribes and the US government.

- To recognize the issues of fairness, equity, and the disparities experienced by Indian/Native American children and their respective families within the child welfare system.
Learning Objectives

-To identify the following basic provisions of ICWA:
  a) Inquiry and Investigation of Native Ancestry
  b) Noticing of Tribes
  c) Active Efforts
  d) Use of Expert Witnesses
  e) Adoption and Foster Care Placement Requirements

Learning Objectives

-To recognize legal ramifications related to ICWA compliance.
-To be able to describe positive outcomes resulting from collaboration with Tribes and ICWA compliance.

Learning Objectives

-To recognize the necessity and benefits of culturally responsive, participatory, joint case planning with Native American families and Tribal representatives including:
  a) Assessment,
  b) Mental health services,
  c) Permanency options for children, youth and non-minor dependent youth.
Learning Objectives

- To recognize Tribal Customary Adoption and guardianship as concurrent permanency planning options for Native American children and youth.
- To recognize the right of non-federally recognized Tribes to seek court permission to participate in child welfare proceedings.

What is ICWA?

- Federal law passed in 1978
- Established minimum federal standards that must be applied in state child custody proceedings involving Indian children.
- Acknowledges and implements the Tribes right to intervene in state child custody proceedings.
- Shifts legal presumption:
  From: Indian children are better off growing up outside their community.
  To: It is essential for the survival of Tribes and Tribal people that Indian children grow up in the Indian community.
- Political v. Racial distinction

When does the Act apply?

In child custody proceedings:
- Foster care placements
- Termination of parental rights
- Preadoptive placement
- Adoptive placement
- Guardianship placement
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, such as a 600/601 status.
- The Act does not apply to an award in a divorce proceeding if custody is granted to one of the parents.
- The Act does not apply to Non-Federally recognized Tribes – Culturally Best Practices does apply

Historical Trauma

- Deculturation of tribal societies: 217 years of U.S. policies and efforts of extermination, assimilation, taking of land, forced dependency, disruption of family childrearing practices, child removal to boarding schools, negative stereotyping.
- Defined: "A cumulative emotional and psychological wounding over the lifespan and across generations, emanating from massive group trauma experiences."

Native American “Abuse in the Boarding Schools”

www.youtube.com/watch?v=p1tiQB8gt5g

“Abuse in the Boarding Schools” documents the stories of boarding school survivors.
What is an Indian Child?

- Any unmarried person who is under the age of 18
- The child is either a member of a Tribe or is eligible for membership in an Indian Tribe and is the biological child of a member of an Indian Tribe
- Tribal determination is conclusive
- Tribes create their own membership criteria and process

Indians in CA Today

- 109 Federally Recognized Tribes
- 44 terminated tribes that have not been re-recognized
- Largest number of Indian people
- Majority from out of state tribes
- California’s tribes are everywhere throughout the state.
- California has the highest Native American population in the country. According to the 2010 U.S. Census, California represents 12 percent of the total Native American population.

California’s ICWA

- Federal ICWA provides for optional/additional State Protections
- SB 678 passed in 2006 in response to continuing lack of compliance with ICWA nearly 30 years later
- Implemented ICWA into CA codes
  - WIC, Family & Probate
- Judicial Council Rules and Forms in response to legislation
Tribal Sovereignty and Child Welfare

The United States has a government-to-government relationship with American Indian/Alaska Native Tribes. Being American Indian is not only a racial/ethnic distinction; it is also a political status. The fact that the U.S. and other countries have/had treaties with Indian Tribes demonstrates the historical status of Tribes as sovereign nations.

Tribal Sovereignty

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.

Tribal Sovereignty

Be Aware:

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.

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.
Tribal Sovereignty

Tribes exercise sovereign status in many ways, including during Tribal Customary Adoption, and to define criteria for expert witness.

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.

Tribal Sovereignty

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 are 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.

Spirit of ICWA

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.
Minimum Federal Standards & California State Standards

- Inquiry & Investigation of Native Ancestry
- Noticing to Tribes
- Active Efforts vs Reasonable Efforts
- Evidentiary requirements
- Qualified Expert Witness
- Placement Preferences
- Tribal Customary Adoptions

Judicial Council Forms

- JV 100: Juvenile Dependency Petition
- ICWA 010A: Indian Child Inquiry Attachment
- ICWA 030: Notice of Child Custody Proceedings for an Indian Child
- ICWA 020: Parental Notification of Indian Status
  - ICWA 040: Notice of Designation of Tribal Representative
  - ICWA 050 & 060: Transferring Case to Tribal Court Jurisdiction

10 min. Break
Legal Requirements
Practical Application

Inquiry

- Judicial Council Form: JV 100 – § 300 Petition
- Judicial Council Form: ICWA-010(A) – Indian Child Inquiry Attachment (completely filled out)
  - The court and the social worker have duty to ask whether the child may be an Indian child, and to record this information on the Inquiry Attachment Form
  - Must be filed with every 300 & 600 Petition

Notice Procedure

  - Notice must comply with WIC 224.2.
  - Tribe(s) must RECEIVE notices 10 days prior to Jurisdiction hearing.
  - CDSS maintains lists for contact info at: http://www.childsworld.ca.gov/PG2070.htm
Notice

- If there is reason to know the child is an Indian child (i.e., family names Tribe or Tribes).
- Sent by certified mail to:
  - Parent
  - Legal guardian
  - Indian custodian
  - Child’s Tribe
  - BIA

Noticing Issues

- Many cases are overturned on appeal in CA due to improper notice
- Causes problems for children:
  - Delays some cases for children involved
  - Takes the focus off of the rest of ICWA compliance

What are Clans?

A clan is a group of people united by actual or perceived kinship and descent. Kinship based bonds may be symbolical, whereby the clan shares a “stipulated” common ancestor that is a symbol of the clan’s unity. When this “ancestor” is non-human, it is referred to as a totem, which is frequently an animal. The ancient indigenous people of the Southwest identified with an extended family, or clan. Among Native American Indians in the Southwest, clan ties follow matrilineal blood lines.
What are Clans?

Clans preceded more centralized forms of community organization and government. Later, clans banded together as Tribes or nations. Many modern-day Native American Indians still maintain their clan relationships and responsibilities. Clans in indigenous societies are likely to be exogamous, meaning that their members cannot marry one another.

Activity: How are you connected to your Clan? What does your Clan contribute to your Tribe as a whole?

Group Activity: Vignette Case 1 & 2

Follow the basic provisions of ICWA and identify step by step:

a) When and how will you inquire?
   - When does “Active Efforts” take place?
   - Does a Tribe need to be contacted? If so, when and how will you contact the Tribe(s)

b) Determine if a Family Maintenance case or Family Reunification case is needed.
   - Identify who will be included in this decision
   - Identify what form(s) are needed. (If an ICWA 10A is needed, complete the form)

c) Determine if Notice is required. If so, what forms are needed?
   - Identify who will be Noticed and how will it be sent.

Active Efforts

- Social worker must make active efforts to provide services and programs designed to prevent the breakup of the Indian family.
- The services should be appropriate to the prevailing social and cultural values and way of life of the Indian child’s tribe.
- The case plan must incorporate extended family, the tribe, Indian social service agencies, and individual Indian caregivers.
- Social worker must provide evidence that active efforts have been made and were unsuccessful prior to court ordering Foster Care or Adoption
Work With the Tribe

- Tribes are entitled to intervene at any time.
- Tribe may designate anyone to serve as their representative for the case
  - May be an attorney to represent the Tribe
  - Tribal member from the Tribe’s ICWA Dept.
- Tribes may choose not to intervene right away for different reasons
  - Social workers must still work with the Tribe.

Active Efforts vs Reasonable Efforts

“Active efforts” is a term included in the Indian Child Welfare Act (ICWA). It refers to the amount of effort a social worker MUST devote to providing services to a parent in order to prevent removal of an Indian child from parental care and to assist a parent rehabilitate so a child may safely be returned.

Active Efforts vs Reasonable Efforts

“Reasonable efforts” is a term taken from federal and state law governing the effort a social worker must exert for the similar tasks for non-Indian children.

Section 361.7 does make it clear that “active efforts” must be of a different nature than “reasonable efforts”.
When Do Active Efforts Begin?

Active efforts begin immediately, as soon as a social worker has reason to know the child is potentially eligible for ICWA services. They must provide and document all their efforts to assist in prevention services, case planning and (when necessary) locating a Native placement.

Why Active Efforts Are Required

WIC 361.7, 361(d)

Tribal ICWA Social Worker and Tribal Programs are NOT required to provide "Active Efforts".

Responsibility to provide "Active Efforts" falls to the burden of the state or the county social services agency and their social workers.

Why Active Efforts Are Required

WIC 361.7, 361(d)

Tribal Social Workers are encouraged to work together with a county social worker to develop a plan to deliver active efforts services to Tribal families prior to removal and during the reunification period.

Tribal Social Workers are encouraged but not required to help find culturally appropriate services for the families.
Active Efforts — Standards
25 U.S.C. § 1912(d)

"Any party seeking foster care placement
or termination of parental rights SHALL
SATISFY THE COURT that active efforts have
been made to provide remedial services and
rehabilitative programs designed to prevent
the break up of the Indian family AND that
these active efforts have proved unsuccessful."

Active Efforts — Standards
Cal. Rules of Court, Rule 5.484

Placement of an Indian Child -
Active Efforts.

To place with anyone other than
the parent or Indian custodian or
terminate parental rights the court
must find that active efforts have
been made...

Revised Active Efforts

New revised Guidelines for State
Courts and Agencies in Indian Child
Custody Proceedings Issued by the
U.S. Department of the Interior, Bureau
of Indian Affairs.

(Federal Register/vol. 80,
No.37/Wednesday, February 25,
2015/Notices.)
Active Efforts Include:

1. Engage the Indian child, the Indian child’s parents, the Indian child’s extended family members, and the Indian child’s custodian(s);
2. Take steps necessary to keep siblings together;
3. Identify appropriate cultural services and help the parents to overcome barriers, including to actively assist the parents in obtaining such services;

Active Efforts Include:

4. Identify, notify and invite representatives of the Indian child’s Tribe to participate;
5. Conduct a diligent search for the Indian child’s extended family members for assistance and possible placement;

Active Efforts Include:

6. Take into account the Indian child’s Tribe’s prevailing social and cultural conditions and way of life, and request the assistance of representatives designated by the Indian child’s Tribe for substantial knowledge of the prevailing social and cultural standards.
7. Offer and employ all available and culturally appropriate family preservation strategies;
Active Efforts Include:

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

9. Notify and consult with extended family members of the Indian child to provide family structure and support for the Indian child, to assure cultural connections, and serve as placement resources for the Indian child;

Active Efforts Include:

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

11. Identify community resources that includes housing, financial, transportation, mental health, substance abuse, and peer support services and actively assist the Indian child's parents or extended family to utilize and access those resources;

Active Efforts Include:

12. Monitor progress and participation in services;

13. Provide consideration of alternative ways to address the needs of the Indian child's parents and extended family, if services do not exist or if existing services are not available;

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

15. Provide post-reunification services and monitoring.
Culturally Appropriate Case Plan

- Services designed for American Indian children and families
- Collaboration for Case Planning: Tribe and Social Worker
  Tribe, Social Worker and Family members
- American Indian Specific Services:
  - Tribal Health Centers
  - Tribal Substance Abuse programs
  - Tribal TANF
  - Tribal Positive Parenting Programs

Locating Resources & Services

- Internet
  - Many Tribes have their own website
- CDSS maintains lists for service and contact info at:
  - www.childsworld.ca.gov/PG2070.htm
- Judicial Courts website list of resources:
  - www.courts.ca.gov/programs-tribal.htm
- BACAIR: Bay Area Collaborative of American Indian Resources
- Bibliography Provided
- Tribal TANF Offices in California
  - www.tribaltanf.cdss.ca.gov/PG259.htm

Qualified Expert Witness – WIC 224.6 & 361.7(c)

Before the court orders foster care, guardianship or TPR, QEW must testify:
- that continued custody by parent or Indian custodian is likely to result in serious emotional or physical damage.

Inquire if the Tribe has their own QEW

Cannot be an employee of the person or agency seeking the foster care placement.

Must be live testimony unless the parties stipulate to a Declaration

California Qualified Expert Witness List
- www.courts.ca.gov/8105.htm or www.childsworld.ca.gov/PG2070.htm
Foster Care and Adoption
Placement Preferences and Procedural requirements

Placement Preferences

Foster Care
1) With a member of the child’s extended family.
2) With a foster home licensed or approved by the Tribe.
3) With an Indian foster home licensed or approved by a non-Indian licensing authority.
4) With an institution approved by an Indian Tribe or operated by an Indian organization.

Placement Preferences

Adoption
1) With a member of the child’s extended family.
2) With other members of the Indian child’s Tribe.
3) With other Indian families.
Placement Preferences

- The Tribe may establish a different preference order by resolution.
- When no preferred placement is available, active efforts must be made to place the child with a family committed to enabling extended family visitation and cultural and ceremonial events of the child’s Tribe.
- Must follow preferences unless court determines that there is good cause not to.

Adoptions in ICWA Cases

Tribal Customary Adoptions (TCA)

- Can be considered early in the case as a plan for permanent placement and must be documented in the court report.
- Parental Rights are maintained by the parents, however, the Tribe will find someone within their Tribe to adopt the child(ren).

Adoptions in ICWA Cases

Tribal Customary Adoptions (TCA)

- Social workers must consult with the Child’s Tribe prior to the Disposition Hearing to determine if the Tribe participates in TCA or similar process.
- Not all Tribes use TCA, however, some Tribes will not allow adoption, as it is against the custom and they will only consider guardianship or long-term foster care.
Group Activity: Vignette Case 1 & 2

Follow the basic provisions of ICWA and identify step by step:

d) Develop a case plan utilizing “Active Efforts”
   - Identify who will be involved in case planning
   - Identify how you will incorporate and execute Native services into your case plan

e) Is a Qualified Expert Witness (QEW) needed? Who will you contact first? What resource will you use to find a QEW?

f) Determine if there is risk and if the child needs to be removed from the home.
   - If so, identify active efforts to follow placement preference. Who will be contacted?

Evaluations and Closing

- Complete Evaluations
- Closing Circle