The Indian Child Welfare Act: Commonly Asked Questions

What is ICWA and why was it passed?

"ICWA" stands for the Indian Child Welfare Act, which is a federal law passed in 1978. ICWA was passed in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies. The intent of Congress under ICWA was to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families" (25 U.S.C. § 1902). ICWA sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of or eligible for membership in a federally recognized tribe.

How does ICWA protect American Indian/Alaska Native children and their families?

When ICWA applies to a child's case, the child's tribe and family will have an opportunity to be involved in decisions affecting services for the Indian child. A tribe or a parent can also petition to transfer jurisdiction of the case to their own tribal court. ICWA sets out federal requirements regarding removal and placement of Indian children in foster or adoptive homes and allows the child's tribe to intervene in the case.

Note: The terms Indian and American Indian/Alaska Native are used interchangeably throughout this document. Additionally, the term "tribe" includes all federally recognized Alaska Native villages and tribes located in the lower 48 states.

Who is covered by ICWA?

Indian children involved in state child custody proceedings are covered by ICWA. A person may define his or her identity as Indian but in order for ICWA to apply, the involved child must be an Indian child as defined by the law. ICWA defines an "Indian child" as "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" (25 U.S.C. § 1903). Under federal law, individual tribes have the right to determine eligibility, membership, or both. However, in order for ICWA to apply, the child must be a member of or eligible for membership in a federally recognized tribe. ICWA *does not* apply to divorce proceedings, intra-family disputes, juvenile delinquency proceedings, or cases under tribal court jurisdiction.

How do I know if my child is eligible for membership in a tribe?

All tribes have the right to determine who is a member of their tribe, and different tribes have different requirements for eligibility. In order to understand these requirements for the particular tribe in question, **contact the child's tribe.** For more information on how to contact the child's tribe, please visit our website at www.nicwa.org. Click on the *Resources* tab and then click on *Tribal Directory.*

What if my child is Indian but is not a member of a federally recognized tribe?

If your child does not meet the definition of "Indian child" outlined in the act, ICWA would not apply to your child's case. Other federal and state laws, however, may provide other protections, including relative placement provisions and the opportunity to be heard in a case review hearing.

What considerations should be made in an ICWA case?

Caseworkers must make several considerations when handling an ICWA case, including: 1) providing active efforts to the family (see section entitled "What are active efforts?"); 2) identifying a placement that fits under the ICWA preference provisions; 3) notifying the child's tribe and the child's parents of the child custody proceeding; and 4) working actively to involve the child's tribe and the child's parents in the proceedings. Your caseworker should be able to explain your rights under ICWA and any other case actions in a manner that is easy for you to understand.

Who should you contact if you feel that your rights under ICWA are being ignored?

If you feel that ICWA is not being applied correctly in your child's case, you should contact the following people as soon as possible:

- An attorney (Indian law experience preferred)
- Legal services
- The child's tribe

The court may order different services or a different placement if it is determined that ICWA is not being applied correctly.