

DEPARTMENT OF SOCIAL SERVICES

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May 26, 1982

ALL-COUNTY LETTER NO. 82-49

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: INDIAN CHILD WELFARE ACT - FOSTER CARE

REFERENCE:

During delivery of training on the Indian Child Welfare Act (ICWA) and corresponding state foster care regulations to county welfare department staff a number of questions requiring legal research and analysis were raised. Those questions and their responses follow:

1. Question - Must a SOC 318 (Confirmation of Child's Indian Status form) be completed and sent to the Bureau of Indian Affairs for verification of a child's Indian status if the child possesses proof of enrollment?

Answer - No, a SOC 318 need not be completed if the child possesses enrollment documents (MPP Section 30-109.3441).

2. Question - Do the provisions of the ICWA apply to the annual review of cases, mandated by Welfare and Institutions Code (W&IC) Section 366, when the Indian children were declared dependents of the Juvenile Court prior to the effective date of the ICWA?

Answer - The provisions of the ICWA apply to such annual court reviews for all cases where the dependent Indian child has been removed from the custody of his/her parent or Indian custodian.

In contrast, an annual review is not subject to the provisions of the ICWA in cases of Indian children who were made dependents before the effective date of the ICWA but who remain in the custody of their parent(s) or Indian custodian and where there is no request or recommendation for a change in custody or placement of the dependent Indian child.

3. Question - What right, if any, does a parent or Indian custodian of an Indian child have to request that the Indian child be placed in a non-Indian foster home? In a voluntary placement? In an involuntary placement?

Answer - A parent or Indian custodian of an Indian child always has the right to request that the county or the court make a particular foster care placement, including placement in a non-Indian foster care home. Where appropriate, the court is to consider the preference of the Indian child or parent. Note that the Indian custodian's preference is not given the same status as that of the Indian child or the parent.

Although a parent or Indian custodian has the right to request a specific home or environment for the Indian child, the Indian child may be placed elsewhere by the court. In voluntary placements, the parent or Indian custodian has the option of not placing the child if the court or agency's decision is not consistent with the parent's wishes.

4. Question - In voluntary placement procedures, may the consent form (SOC 155C) be signed by the court referee rather than a judge?

Answer - The voluntary consent may be signed by the court referee rather than the judge provided the judge has specifically authorized the referee to perform this duty. (WI&C Section 248).

5. Question - Does the Indian Child Welfare Act supersede the Welfare and Institutions Code?

Answer - The standards set forth in the Indian Child Welfare Act apply only to children who are determined to be covered by the Act. The Welfare and Institutions Code applies to all children.

The Act is not in conflict with the Welfare and Institutions Code; it sets different and specific laws which apply to Indians. The Indian Child Welfare Act provides that in any case where another State or Federal law applies to a child custody proceeding and such law provides a higher standard or protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under the ICWA, the state or federal court shall apply the other state or federal standard.

6. Question - Are counties now mandated to take voluntary placements where Indian children are concerned since procedures for the taking of voluntary placements are identified both in the Act and State Regulations?

Answer - No, counties are not mandated to take voluntary placements. However, should the county exercise this option, it must follow the ICWA and the regulations as described in MPP Section 30-204.239.

7. Question - If the Bureau of Indian Affairs identifies more than one tribe for which the child may be eligible for enrollment, who determines the child's tribe?

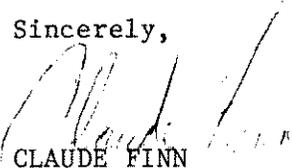
Answer - Where an Indian child is a member of more than one tribe or is eligible for membership in more than one tribe the court should be called upon to determine with which tribe the child has the most significant contacts (MPP 30-002.10). This applies in any case of a voluntary or court-ordered foster care placement of an Indian child.

8. Question - Must the ICWA be followed when Indian children are made dependents with in-home court supervision.

Answer - Yes, the ICWA must be followed. The ICWA applies to child custody proceedings, which include the foster care placement of an Indian child. There is no practical point in time except when a dependency petition is filed that can be identified as the point at which the risk of foster care placement is incurred. It is the filing of the dependency petition, therefore, which initiates an involuntary foster care placement child custody proceeding as defined by the ICWA.

If you have any questions regarding the issues addressed in this letter, please contact your program consultant at (916) 445-7653.

Sincerely,



CLAUDE FINN  
Deputy Director

cc: CWDA