



Child Welfare Community of Practice Convening Report

Sunday, March 2, 2008

9:00 a.m. – 4:00 p.m.

Washington, DC –Westin City Center

I. Participation

The participants represented the following tribes, organizations and agencies:

- Nevada Indian Commission
- Casey Family Programs
- Washoe Tribe of Nevada and California
- National Indian Education Association (NIEA)
- National Indian Child Welfare Association (NICWA)
- North Fork Rancheria
- St. Regis Mohawk Tribe
- Sicangu Child & Family Services
- Rosebud Sioux Tribe
- Wiyot Tribe
- Indian Child and Family Resource Center
- Makah Tribe
- Association of American Indian Affairs
- Pueblo of Isleta
- Omaha Tribe
- Native Women's Society
- Confederated Tribes of Umatilla
- Pueblo of Santa Ana
- Tlingit Haida Central Council
- North Fork Rancheria of Mono Indians
- Sacred Circle/Cangleska
- Cowlitz Tribe
- Red Lake Band of Chippewa Indians

II. Agenda for Discussion

- (1) Overview of Title IV-E as a Critical Component of Indian Child Welfare (Terry Cross)
- (2) Group Discussion: Perspectives on Title IV-E: Policy, Practice and Research
- (3) Organizational Presentations: What contributions are we all currently making to address the need for foster care and adoption resources (in particular Title IV-E funding) in Indian Country?
- (4) Group Discussion: Given the Community of Practice (CoP) concept, the state of Title IV-E work in Indian Country, and the resources (people, organizations, technology) available to us, what do we want to do together?
- (5) Group Discussion: Who else needs to be involved in this effort? How should we recruit them?
- (6) Group Discussion: What data and research are necessary to support our work? What are our data and research priorities?
- (7) Wrap-up and Next Steps

III. NICWA Overview of Title IV-E, Context and Background

Terry Cross, Executive Director of the National Indian Child Welfare Association (NICWA), made a presentation on the “Tribal Foster Care and Adoption Access Act” of 2007. This Act would authorize tribes, tribal organizations and tribal consortia to apply directly to the Department of Health and Human Services (DHHS) to administer the Title IV-E foster care and adoption assistance program. Successful tribal applicants would be awarded much-needed funding, thus enabling them to provide foster care and related services to their tribal children. As Terry stated, “Title IV-E is an entitlement program that provides services to children who have been abused and neglected and removed from their homes.”¹ “The passage of this legislation would provide more safety and security for Indian children, families and tribes than almost any other change that the Congress could make,” he further said.

Currently, tribes are excluded from directly accessing the largest sources of federal child welfare funding, including Title IV-E. The federal funding programs that tribes do have direct access to, including ICWA, BIA 638, and Title IV-B, are limited in comparison to that which states are eligible for. The proposed legislation would help to fill this gap by making tribes eligible to apply for and receive Title IV-E funds directly.

The Title IV-E program, which is a \$6-7 billion a year reimbursement program, is intended to cover a portion of the monthly foster care payments to families, training, licensing, caseworkers’ time, and the cost of data collection.² Tribes planning for and administering this program should know that the DHHS will only reimburse a grantee for services provided to children who meet the IV-E eligibility requirements. The current program does not cover family placements (kinship care) or guardianships. Although there is some discussion about increasing the cut-off age to 21, the current program does not cover children over the age of 18.

There are a number of implications to consider if tribes are to gain direct access to Title IV-E program funds. The most important implication is that tribes administering the program would be able to keep children in their tribal child welfare system and community, and would not be faced with the only option of transferring cases to the state due to lack of funds. Some of the potential drawbacks and areas of caution include: any non-federal match requirements; issues with income eligibility³; having to wait for payment after delivery of services since Title IV-E is a reimbursement program; having adequate court systems that will ensure due process; competent record keeping capacity; and the need to apply to DHHS and be approved to administer the program.

IV. Perspectives on Title IV-E: Policy, Practice and Research

Participants identified a number of issues that currently exist around current Title IV-E programming and the involvement of state offices and agencies. Pursuant to the current law, tribes must establish intergovernmental agreements with states if they wish to administer the program. These discretionary “pass through” agreements are considered a poor second choice to that of tribes’ direct access to Title IV-E funding for a number of reasons.

First, states are not required to enter into tribal-state agreements, regardless of need or perceived benefit. Thus, there are major inconsistencies across the country with currently about 70 tribal-state agreements serving less than half of the federally recognized tribes. Second, many tribal-state agreements do not provide tribes with funding for all Title IV-E services. Many tribes have also expressed that states that do

¹ National Indian Child Welfare Association (NICWA), *S. 1956 and H.R. 4688: Amendments to Provide Direct Title IV-E Funding to Tribes for Foster Care and Adoption Assistance Services*, February 2008. <http://www.nicwa.org/legislation/ActionAlert/Description%20of%20s1956%20and%20hr4688.doc>

² States also pay a share of foster care and adoption assistance resources based on a matching formula.

³ Currently, the IV-E program only covers partial costs for “low income” children. The eligibility requirements for low income under the program have not been changed since 1996, which is a significant challenge of the program.

enter into agreements micromanage and “nitpick” the tribes’ programs to the point that tribes feel that they are unable to operate them effectively.

Moreover, tribes’ lack of direct access to Title IV-E funding creates a negative and unproductive power dynamic because the federal government distributes money to the states, which then have the option to establish tribal-state agreements with interested tribes. Tribal-state negotiations and administration of title IV-E can be complicated by county-state relations, which vary from state to state. Some states directly oversee the county, some distribute funds directly to the county, and other states do neither, preferring to administer funds at the state level instead.

After discussing many of problems associated with tribes’ lack of direct access to Title IV-E funding, the participants’ highlighted a number of programmatic and fiscal implementation issues. Should tribes gain direct access to Title IV-E funding, participants had concerns about who within DHHS would make the determination as to when tribes are ready to administer the program and what criteria DHHS would use to make these determinations. More specifically, participants had concerns that tribes’ relative ability to meet the fiscal requirements of the program might prevent DHHS from awarding funds to tribes.

Most tribes have little to no general funds to use to pay for Title IV-E program services. Tribes are therefore in need of need significant start-up funds and cannot rely solely on reimbursement. Some tribes and tribal agencies are also concerned about pursuing Title IV-E because they believe that the BIA will terminate the minimal child welfare funding they currently receive through the welfare assistance program. Especially with regard to certain states, there are significant cross-jurisdictional concerns in implementing these programs because some tribes have members who fall under Public Law 280, while others do not.

Participants also noted that there are specific governance considerations for tribes that plan to administer Title IV-E. Some participants explained that tribes find themselves battling the myth that they are inefficient or inexperienced when it comes to developing and enforcing standards for these programs. Some have expressed concern that should tribes be given the ability to develop their own foster home licensing standards, that they would be more lenient than those of states. Participants de-bunked this myth in stating that where tribes have had the opportunity to develop their own standards (e.g. water quality, Endangered Species Act enforcement, etc.), their tribal standards have been more stringent than those of states.

In discussing governance considerations associated with tribes’ administration of Title IV-E, some participants stated that tribes should always develop their own Title IV-E memoranda of understanding with states and counties, spelling out the roles and responsibilities of each respective government. Others stressed tribes’ special obligation to raise their children, and the importance of asserting tribal jurisdiction in child welfare cases, in an effort to bring children back to the tribe.

Participants also discussed some of the challenges associated with customary adoption. Some participants noted that tribes are in need of technical assistance to support customary adoption. They explained that tribes should be focused on creating more family in a child’s life rather than less. The availability of technical assistance is very important in this endeavor, but participants also noted that tribal communities need to accept and adapt assistance so that it is culturally appropriate for their communities. One major problem that arises out of customary adoptions is that there is no enforcement, even if the states agree to it.

In response to the participants’ discussion about customary adoption and tribes’ need for technical assistance, Terry Cross and David Simmons highlighted NICWA’s tribal child welfare certification program. The program allows child welfare workers in Native communities to receive a certification within their community. It’s geared towards social service workers who are community-based, but do not necessarily possess a college or graduate school degree. The program must also be endorsed by tribal leaders, and it takes about a year and a half for workers complete.

VI. Resource Discussion and Next Steps

The facilitators led the group in a discussion to assess current Indian child welfare resources and needs. The first identified resource need was that of the sample documents. The participants expressed a strong desire for online resource guidebooks that would include examples of policies (e.g. tribal codes, licensing agreements, etc); intertribal agreements; tribal-state agreements and compacts; and internal tribal regulations.

The participants also stressed the importance of having access to current ICWA program-related information for each state. It was agreed that a list including all states with ICWA laws, their funding situations, state regulations, and state agency procedures would be enormously helpful to tribes.

There are also resource needs in the area of research, regarding best practices and planning in Indian Country. Some participants noted that it is important to be able to show how children fare in tribal foster care as opposed to state foster care. The last time such research was conducted and published was in report by the BIA in 1988. Conducting new research in this area would help tribes to address the fears of mainstream institutions that they are incapable of providing adequate care for their children; it would likely support tribal beliefs that not only is care in the tribal system not substandard, it actually provides many ancillary benefits that the state system is largely unable to provide.

Finally, the facilitators led a discussion about next steps. There is a need to develop and document best practices that are tribally-driven and accepted by the DHHS. These practices need to be culturally appropriate and tested in Indian Country. This effort would go a long way toward developing evidenced-based practices. Participants also stressed that more needs to be done in an effort to increase state recruitment of Indian families, as there is a shortage of licensed Indian foster homes, thus resulting in non-Indian placements. Finally, participants suggested that should the amendments to Title IV-E not pass in this congressional session, a “backup” plan to continue to strive for passage and to improve tribal-state agreements should be developed in the meantime.

VII. Reaching Out to New Stakeholders

The final part of the CoP session involved a brainstorming session about important stakeholders and organizations that should be involved and actively engaged in future conversations about Indian child welfare. The participants generated the following list:

- Native American Rights Fund;⁴
- National Alliance of Tribal TANF;
- Native American foster care support groups across the country;
- More state officials;
- Staff from state Indian Affairs offices;
- Tribal and state ICWA managers;
- BIA Social Services staff;
- Detention center staff;
- Elders; and
- Kinship organizations

⁴ They have a program to catalog several codes and laws and could provide help in some of the next steps.