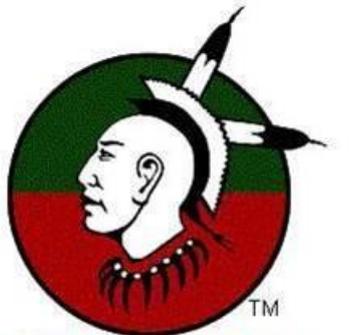


Indian Child Welfare Act

Federal & Iowa



"MESKWAKI NATION"

Meskwaki Family Services-ICWA 2011,
Sac & Fox Tribe of the Mississippi in Iowa



American Indian Population in North America

- There are approximately 564 federally recognized Tribes in the United States.

American Indian Population in Iowa

- Of the 3 million people in Iowa, 11,084 reported American Indian heritage.
- There have been 40 Tribes identified in Woodbury County, Iowa alone.

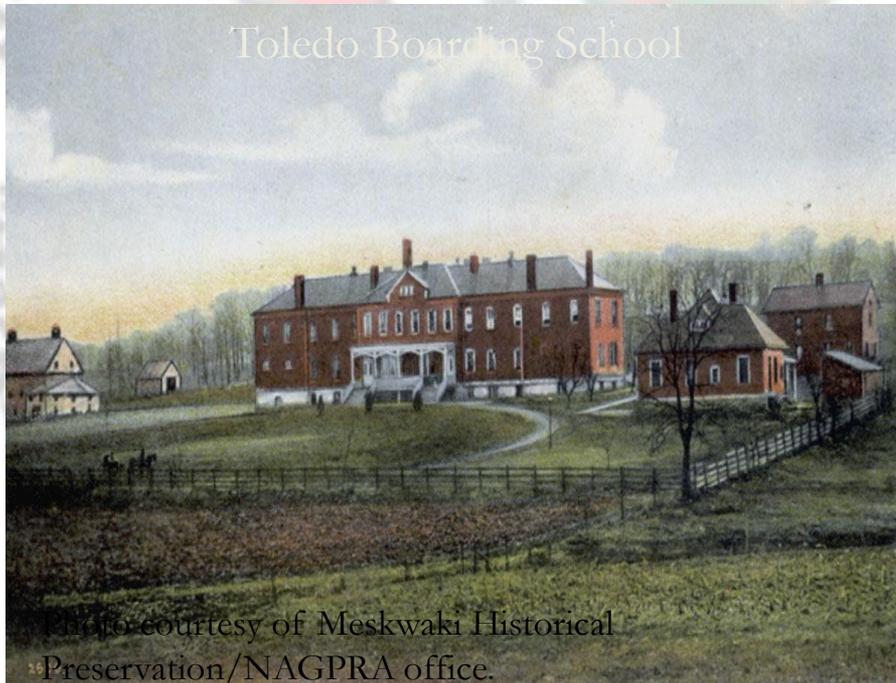
Sources: 2010 US Census Bureau, State Library of Iowa, State Data Center Program

Five Stages of US Government's American Indian Policies

- **1600's – 1840's**
- **Removal Period**
 - “only good Indian is a dead Indian”
- **1860 – 1920's**
- **Reservation Period**
 - “kill the Indian save the man”

Five Stages of US Government's American Indian Policies

- **1930's – 1950's**



- **Termination Period**

- Government relocation programs developed to achieve sociocultural integration to end dependence on federal government.

Five Stages of US Government's American Indian Policies

- **1975 – Present**
- **Self Determination Period**
 - Increase in Tribal sovereignty following a period of Native activism (i.e.- AIM)



Meskwaki Family Services-ICWA 2011, Sac & Fox Tribe of the Mississippi in Iowa

Self Determination Period

- **1978**
 - **Indian Child Welfare Act**
 - is enacted after Congressional hearings find a disproportionate number of Indian children are being placed in non-Indian settings

Self Determination Period

- **2003**



- **Iowa ICWA** was enacted to assist the state's child protection workers in clarifying:
 - Provisions
 - Guidelines for out-of-home placements

Indian Child Welfare Act

- Notification
- Expert Witness
- Active Efforts
- Jurisdiction
- Compliance

Notification

- **The court shall require a party who is**
 - **seeking the foster care placement of**
 - **termination of parental rights over**
 - **the adoption of**

An Indian Child to seek to determine whether the child is an Indian Child through contact with any Indian Tribe in which the child may

- **be a member**
- **be eligible for membership.**

Notification – who to ask

- **Child's parent**
- **Any person who has custody of the child or**
- **Person with whom the child resides, and**
- **Any other person that reasonably can be expected to have information regarding the child's possible membership in an Indian Tribe**
- **U.S. Department of the Interior (B.I.A.)**

Notification – How?

- **Written determination by an Indian Tribe/ ICWA office that a child is a member of or eligible for membership in that tribe**

Or-

- **Testimony attesting to such status by a person authorized by the tribe to provide that determination shall be conclusive**

Notification cont.

- **Determination of the Indian status of a child shall be made as soon as practicable in order to:**
 - **Serve the best interest of the child**
 - **Ensure compliance with the notice requirements**

Notice Requirements

- **Within three business days following the removal or placement of an Indian Child, the court issuing the order shall notify the Indian Child's tribe of the emergency removal or placement by registered mail, return receipt requested.**

Notice Requirements

- **The notice shall include:**
 - **Court order**
 - **Petition**
 - **Statement informing the child's Tribe of the Tribe's right to intervene in the proceedings**

Notice Requirements

- **If the identity or location of the child's parent, custodian or Tribe *cannot* be determined, the notice shall be provided to the BIA Secretary of the Interior, who will have 15 days after receipt of the notice to provide notice to the child's parent, Indian custodian, and Tribe.**

Notice Requirements

- **A foster care placement or termination of parental rights proceeding involving an Indian child shall *NOT* be held until at least ten days after receipt of notice by the child's parent, Indian custodian, and Tribe, or the Secretary of the Interior.**

Notice Requirements

- ***Upon request***, the child's parent, custodian, or Tribe shall be granted up to 20 additional days after receipt of the notice to prepare for the proceedings.

IMPORTANT

- DHS ***DOES NOT*** have discretion to determine the applicability of the Federal or Iowa ICWA to a child custody proceeding.
- Only Tribes themselves can make that determination.

Qualified Expert Witness

- May include but is not limited to:
 - Traditional Tribal Therapist or Healer
 - Spiritual Leader
 - Tribal Historian
 - Tribal Elder
 - Professional Layperson

Qualified Expert Witness

- **Must have specific knowledge of the child's Tribe to Testify in Court regarding the Tribe's:**
 - family organization
 - child rearing practices
 - to whether the Tribe's
 - culture
 - customs
 - laws
- support the child's placement or termination.**

Qualified Expert Witness- Order of Preference

- 1. Member of the child's Tribe** - recognized by the Tribal Community as knowledgeable regarding customs as they pertain to family organization and child rearing.
- 2. Member of another tribe** - formally recognized by the child's tribe as having the knowledge to be a qualified expert witness.
- 3. Layperson having substantial experience** - in the delivery of child and family services to Indians, and substantial knowledge of the prevailing social and cultural standards of child rearing within the child's tribe.

Qualified Expert Witness- Order of Preference

4. **Professional person** - having substantial education and experience in the person's professional specialty and having substantial knowledge of the prevailing social and cultural standards and child rearing practices within the Indian child's tribe.
5. **Professional person** - having substantial education and experience in the person's professional specialty and having extensive knowledge of the customs, traditions, and values of the child's tribe as they pertain to the family organization and child rearing practices.

**** It is important to secure testimony from witnesses satisfying the greater preference as compared with the last preference****

ACTIVE EFFORTS

- Involve a vigorous and concerted level of case work that extends beyond the typical level of reasonable effort.
- Reasonable efforts should not be misconstrued as Active efforts.

ACTIVE EFFORTS

- Active efforts must take into account the social and cultural values, conditions and way of life of the child's tribe
- Shall utilize resources within the Indian child's family, Tribe and Indian social service agencies.

ACTIVE EFFORTS

- Satisfied by taking minimum, particular actions including:
 - Request to the tribe to convene traditional and customary support and resolution actions or services
 - Identification and participation of tribally designated representatives at the earliest point
 - Consult with extended family members to identify family structure and support services that may be provided by extended family members

ACTIVE EFFORTS

- Frequent visitation in the Indian child's home and the homes of extended family members
- Exhaust all tribally appropriate family preservation alternatives
- Identify and provide information to the child's family concerning community resources and actively assisting the family in accessing those resources

Out-of Home Placements

- When it is determined that a child can no longer safely remain in the home, a descending order of placement preferences are outlined in both federal and Iowa ICWA.

Placement Preferences

- Indian child's family, extended family, clan
- Indian child's tribe
- Other Indian family
- Tribally approved Indian foster home
- Other tribally approved foster home

Jurisdiction

- Iowa Indian Child Welfare Act

232B.5 Discusses proceedings, jurisdiction, notice and transfers

Jurisdiction

- **Good Cause** *NOT* to transfer jurisdiction:
 - Tribe declines
 - Tribal court does not have subject matter jurisdiction under the laws of the tribe or federal government
 - Transfer would create undue hardship in receipt of evidence and the tribal court cannot obtain the evidence through alternate means
 - Parent objects

COMPLIANCE

- DHS, in consultation with Tribes, must establish standards and procedures for the department's review of cases subject to the Federal & Iowa ICWA and methods for monitoring compliance

Tribal - State Agreement

COMPLIANCE VIOLATIONS

Court must vacate a court order and remand for any of the following violations:

- Failure to notify parent, Indian custodian, or Tribe
- Failure to recognize jurisdiction of the Tribe
- Failure, without cause as specified..., to transfer jurisdiction
- Failure to give Full Faith & Credit to public acts, records, or judicial proceedings of an Indian Tribe

COMPLIANCE VIOLATIONS

Court must vacate a court order and remand for any of the following violations:

- Failure to allow intervention by Indian custodian or Tribe, or if applicable, extended family members
- Failure to return the child when removal or placement is no longer necessary to prevent imminent physical damage or harm
- Failure to provide testimony of qualified expert witness

Iowa ICWA

- The purpose of ICWA is to guide child protection agencies in the placement of Indian children when they cannot remain in their homes.
- An out-of-home placement that is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community is the goal.

Resources

- Native American Rights Fund – www.narf.org and click on the Practical Guide to the Indian Child Welfare Act
- National Indian Child Welfare Association – www.nicwa.org
- Federal Register – Department of Interior; Bureau of Indian Affairs; Indian Child Welfare Act: Designated Tribal Agents for Service of Notice - <http://www.gpo.gov/fdsys/pkg/FR-2010-05-19/pdf/2010-11696.pdf>
- For Tribal Contact information visit www.ayazuta.com



Thank you.

Questions?

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