

2007 Amendments to Tribal/State Agreement

The 1998 Tribal/State Agreement (Agreement) on Indian Child Welfare was amended on February 22, 2007. The new Agreement emphasizes the importance of Tribes being an immediate and continuing party. Changes to the Agreement:

Definitions more explicit and consistent with ICWA

- “Active Efforts” includes a more detailed description of the meaning of this standard needed to satisfy a court that efforts have been made to preserve an Indian family.
- “Best Interest” of an Indian child as supporting the child’s sense of belonging to family, extended family, clan and Tribe.
- “Qualified Expert Witness” was expanded to acknowledge the importance of having, in an ICWA case, a qualified expert witness whose knowledge and experience is tribe-specific. This amendment is significant because it recognizes the uniqueness of tribes and avoids a ‘one size fits all’ approach to American Indian child rearing practices.

Prohibits “Existing Indian Family”

- Clarifies that ICWA applies regardless of whether a child is part of an existing Indian family or the level of contact with a Tribe. This goes to the heart of ICWA whereby Congress recognized the inherent sovereignty of Tribes and the importance of the Indian child to the continued existence of Tribes.

Notice and collaboration

- Best practices require county social services agency to immediately notify designated tribal authorities of a child protection report about an Indian child on a reservation and ask for accompaniment of the designated tribal representative onto the reservation; and collaborate with the designated tribal representative in an assessment or investigation.
- “Notification” request assistance when entering reservation.

Jurisdiction

- An Indian tribe has exclusive jurisdiction over child placement proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe except where jurisdiction is otherwise vested in the state by existing federal law.
- When an Indian child is a ward of tribal court, the Indian tribe retains exclusive jurisdiction.
- This section clarifies that ICWA applies to any child custody proceeding defined by the law.

Placement Preferences

- Tribes can specify their own order of preferences as long as the placement is the least restrictive setting appropriate to the particular needs of the child. Default placement preferences identified in ICWA.

Resolution Process for Issues of Non Compliance

- Change from compliance review team model to ICWA consultant model.

Funding Issues

- Tribal social service agencies can submit eligible adoptive placement costs for reimbursement to DHS.