



# How Child Welfare Works with American Indian Families

## The Voices of Zak's Aunt and Uncle

When we first found out that our nephew, Zak, (my brother's 2 year old son) was in foster care, we weren't sure what to do. He was in another state and his parents had been accused of physically abusing him. Even though he is an enrolled member of our tribe, he wasn't in an Indian foster home like the Indian Child Welfare Act requires. But at the time, that was the least of our worries. We just wanted to find out what we could do to help my brother, sister-in-law, and nephew.

Things didn't look too good. Even though the abuse charges were alleged, they hadn't been proven. But besides the abuse charges, my brother and his wife were pretty heavily involved in drugs and didn't seem to be doing anything to try to get their son back. My husband and I didn't think Zak would ever be returned to them because they really weren't working on their treatment plan.

We were licensed foster parents on the reservation where we live. We figured we'd have a good chance to get our nephew placed with us when the permanent plan was decided. My brother and sister-in-law were ok about us having Zak placed with us. But the child welfare agency in their state thought we wouldn't protect him from his parents, so they left him in the non-Indian foster home.

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At first the child welfare agency didn't notify our tribe about our family situation. My brother didn't tell the worker that he was a tribal member, and she didn't think Zak looked "Indian." If the agency worker had asked Zak's parents more about their Indian heritage, she would have found out that Zak was enrolled with our tribe. By the time the agency worker found out about Zak's Indian heritage and notified our tribe, Zak had already been in foster care for 3 months. The tribe intervened and told the child welfare agency that they wanted to transfer Zak's case to tribal court in our state. But the state court found "good cause" not to transfer and noted that Zak had bonded with the foster family.

So Zak stayed in the non-Indian foster home where he'd been placed. We were able to visit him only about once every 6 to 8 weeks because it was a hard for us to travel out of state to see him. But we didn't want him to forget us so we kept visiting as often as we could. In the meanwhile, our tribe kept trying to get jurisdiction.

After a year, Zak's mom and dad had not finished their treatment plan and had done nothing to reunify with Zak. The agency worker decided that the permanent plan for Zak would be adoption. Even though she wanted the foster family to adopt him, we also wanted to adopt Zak since he's our nephew. Our tribal lawyer was able to show in court that the purpose of Indian Child Welfare Act is to keep Indian families together. He proved that the social service agency didn't follow the Indian Child Welfare Act from the beginning. He also showed that we had kept close connections with Zak with our visits, and we were bonded to him too. It took a long time, but finally the court ruled in favor of the ICWA and transferred jurisdiction to our tribal court, and we adopted Zak.

We know it was hard for his foster family to give him up, so we try to make sure he has visits with them sometimes. But now Zak is growing up with his cousins, grandparents, aunts, and uncles who live near us on the reservation. He is learning the traditions and ceremonies of our tribe.

If it hadn't been for the Indian Child Welfare Act, our family probably would have been separated forever.

## What is the Indian Child Welfare Act?

The Indian Child Welfare Act (ICWA) is an important federal law for Indian tribes. All state child welfare agencies and courts must follow the law when they are working with Indian families in child custody proceedings.

## What does the Indian Child Welfare Act do for tribes?

ICWA gives Indian tribes the right to be involved in deciding what should happen for Indian children who may be placed in foster care or adoptive placements. Tribes, state agencies, and state courts don't always agree on what the best plan is for Indian children in foster care.

## How does the child welfare agency know when ICWA applies?

To find out if you or your child is an American Indian, the agency worker should ask you if you are a member of a federally recognized Indian tribe. Sometimes, when parents aren't available to give this information, the agency worker may decide this might be an ICWA case if she learns that your family has connections to a Indian tribe, Indian organization, Indian Health Service, etc. Your friends or relatives may also provide information to the child welfare agency that gives them reason to believe they need to follow the Indian Child Welfare Act.

The best information about your tribal enrollment comes from you. Without your help, agency workers will have to look for clues about your Indian heritage, and it will delay the notice that your tribe receives about the situation.

## What rights does the Indian Child Welfare Act give Indian families, and what responsibilities does it give state child welfare agencies?

ICWA gives Indian parents certain rights. ICWA gives state child welfare agencies certain responsibilities:

- Before state child welfare agencies can take children from their families, ICWA requires the agency to make “active efforts” to help keep children at home. “Active efforts” means any kind of direct services and assistance that will help the family stay together. But if the situation is very dangerous, children can be removed immediately until it is safe for them to be returned.
- As an Indian parent or Indian custodian, you, and also your tribe, must receive “notice” by registered mail of all of the legal proceedings involving your children. If your child must be removed from home, the state child welfare agency and state court must notify you and your child's tribe(s). This must occur whenever a tribal member is involved in a child welfare proceeding. The notice must be sent to you and to your tribe by registered mail. No hearing can be held until 10 days after you and your tribe receive the notice. Then you and the tribe can request up to 20 additional days to get ready for the proceeding.

- If you are not able to afford legal counsel, under ICWA, you have the right to have legal counsel appointed by the court. If a state does not provide you with legal counsel, the court is supposed to notify the U.S. Secretary of the Interior. The Secretary is supposed to pay reasonable fees and expenses so that you will have legal counsel.
- Before removing your child from home, ICWA requires that an “expert witness” testify in court that this placement is necessary. The expert witness is a person who is American Indian or who is experienced in working with Indian families.

### What happens if my child is placed in foster care?

If your child is placed into foster care, he must be placed with a relative. If a relative isn't available, he must be placed with a foster family who is a member of your tribe. If no foster family from your tribe is available, your child must be placed with an Indian foster family who is a member of another tribe. Unfortunately, there are often few, if any, Indian foster families available. As a result, Indian children are sometimes placed with non-Indian foster families, although this is not in compliance with the Indian Child Welfare Act.

### What happens if my tribe gets involved?

The tribe may decide to “intervene.” That means that the tribe is in contact with the state child welfare agency and wants to get more information about your situation. The tribe may recommend where your child should be placed. The tribe may ask the child welfare agency to send court reports and other documents in order to stay informed about what is going on.

ICWA gives the tribe a right to intervene and parents *can't* object to this. It is expected that the child welfare agency will cooperate with the tribe's request; however, the agency may choose a plan that is not in agreement with the tribe's plan. It is possible that the court will agree with the state, rather than with the tribe.

The tribe may also request to “transfer” a child's case to tribal court, even if the tribe is in another state. Parents **can** object to the transfer to tribal court. If either parent objects, it will stay in state court.

Sometimes children's cases are not transferred to tribal court because state courts find “good cause” not to transfer. “Good cause” may mean that your child has needs that can be met only in the custody of the state child welfare agency, such as extreme medical needs. Your tribe may disagree with the state's ‘good cause’ decision not to transfer. If the tribe disagrees, it may decide to appeal the decision in state court.

## Practical Tips for Families

- ✓ Tell the state agency worker *immediately* if you are a member of a federally recognized Indian tribe.
- ✓ Ask the agency worker if they have notified your tribe about your situation.
- ✓ Contact your tribe's social service program to find out if they know about your situation.
- ✓ If you're not sure of your tribal heritage, give the agency worker as much information as possible about your family heritage: your parent's names, where they live and what you know about your tribal connections.
- ✓ If your child is being placed in foster care, give the agency worker the names of family members who might be able to take care of your child.
- ✓ If you don't have relatives nearby, ask if your child will be placed with an Indian foster family.
- ✓ Ask for court-appointed legal counsel if you cannot afford to pay for a lawyer.
- ✓ Ask to see the reports and documents that have been filed with the court about the decision to place your child.
- ✓ Attend all the court hearings related to your child.
- ✓ If your child is going to be placed in foster care, ask the agency worker if an Expert Witness has recommended the placement.
- ✓ Ask to visit your child regularly while he is in foster care.
- ✓ Ask for help if you need assistance to follow your Service/Treatment Plan. This plan will describe why your child is involved in the child welfare system, your family's strengths and needs, your child's and family's goals, actions you and the child welfare system are to take, services you and your child are to receive and participate in, and a time period for working on these things. If your child is living at home with you, the service plan will describe what needs to happen so that he will be safe and can continue to live in your home. If your child is in foster care, the service plan states why he came into care. It will say what needs to happen for him to be returned home and for the child welfare agency to no longer be involved with your family.
- ✓ When you sign the service plan, it means that you agree with it. If you don't agree with it, you don't have to sign it. Instead, you could ask the agency worker to reconsider the parts that you don't agree with.
- ✓ Be sure to get a written copy of the service plan to keep.
- ✓ If available, seek help from tribal or off-reservation Indian resource programs to help you with your service plan.

