

The Indian Child Welfare Act: Emphasizing The Importance of Family, Community, Culture and Tribal Identity

Presentation at Arizona
Child Safety and Family
Empowerment Meeting
May 13, 2021

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Indian Boarding Schools



GROUP OF APACHES

Of all the Indians Carlisle has undertaken, no tribe presented a more hopeless outlook than the Apaches from Arizona, who have long held a most undesirable reputation as the outlaws and the lawbreakers of the Indians. Carlisle's experience with the Apaches is that they are as susceptible as others of civilization. They are unusually active and valuable as workers.

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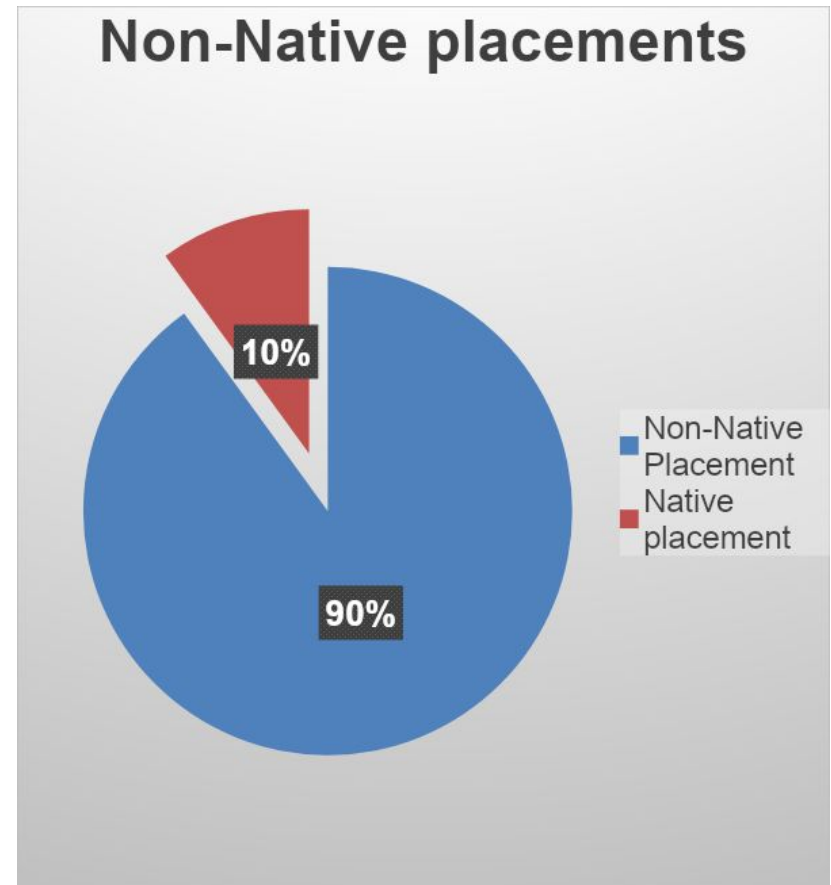
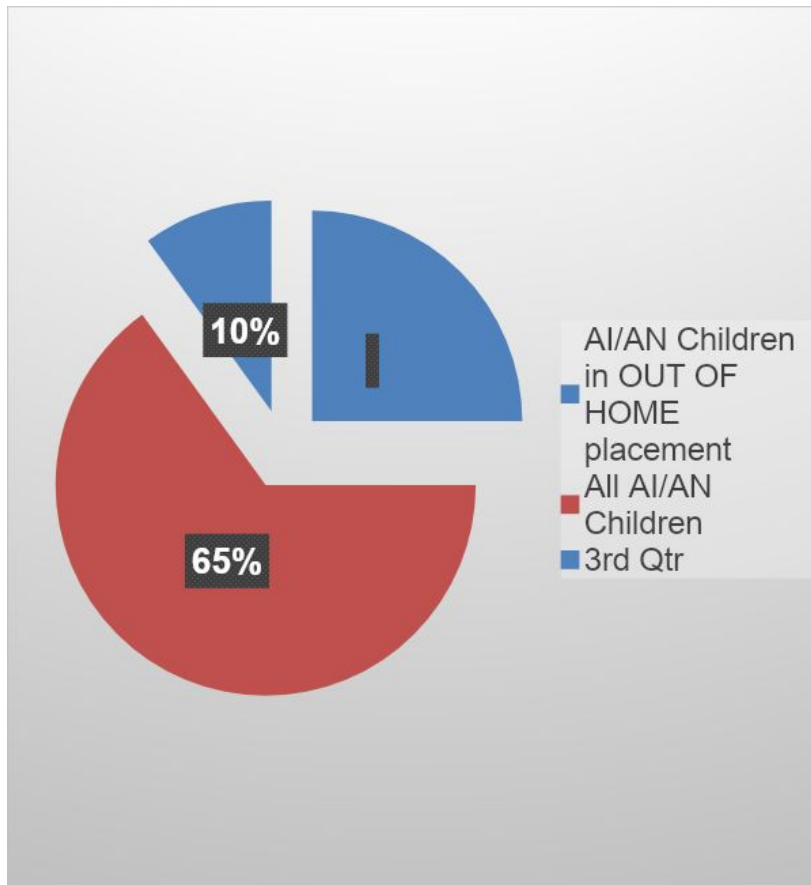


Indian Adoption Project, 1950s-1960s

"No matter how well intentioned and how squarely in the mainstream this was at the time, it was wrong; it was hurtful; and it reflected a kind of bias that surfaces feelings of shame, as we look back with the 20/20 vision of hindsight."

Shay Bilchik, Executive Director of Child Welfare League of America, NICWA Conference 2001

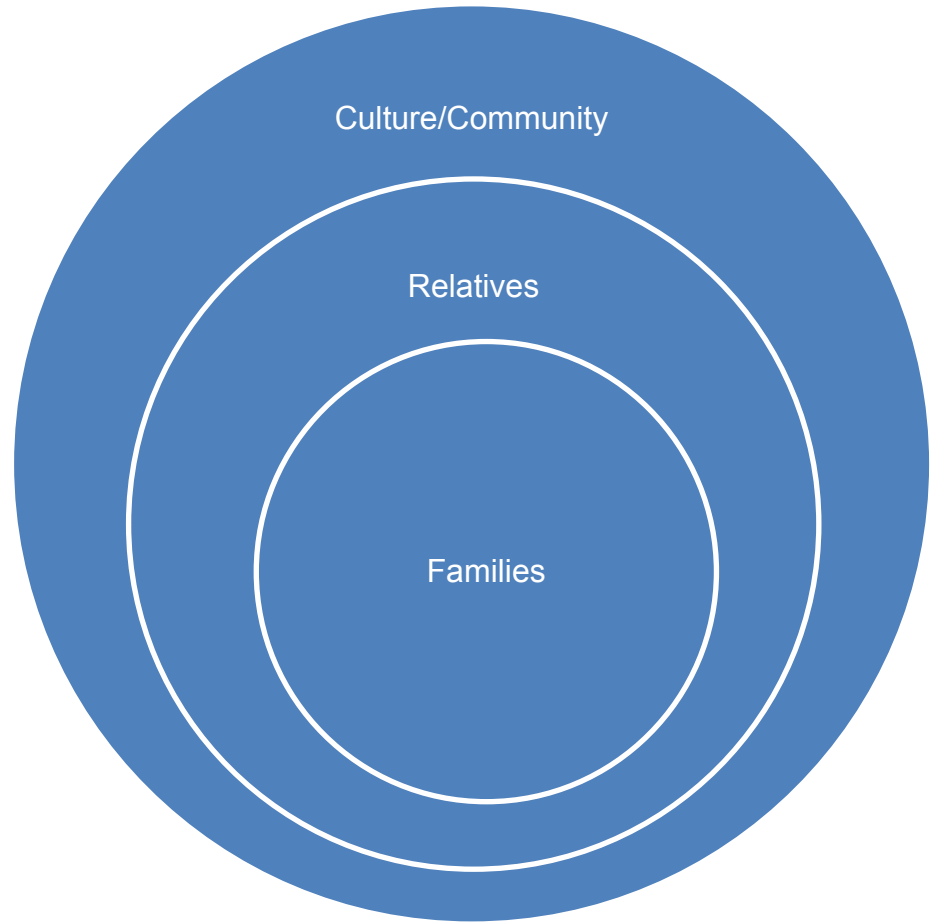
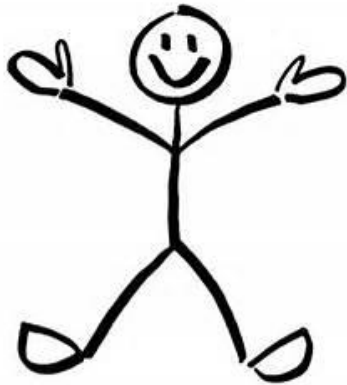
Association on American Indian Affairs 1960-70s found:



Indian Child Welfare Act of 1978

- ICWA is based upon Indian Commerce Clause, plenary power of Congress, and trust relationship between federal government and Indian tribes/people
- Core of the Act is the recognition of tribal sovereignty and the important role of tribes in protecting the well-being of tribal children
- Response to problems identified in state child welfare systems
- Purpose of Act: to curtail state authority
- Adds federal standards to state child welfare law, but does not replace state law except where state law is inconsistent with ICWA

Indian Child Welfare Act principles: The ***Gold Standard*** of child welfare



When does ICWA apply?

In State Court

Not in tribal court

Indian Child

[25 U.S.C. §1903(4)]

Under 18 at start of case;

Unmarried; and

Member of tribe; or Eligible for membership and one bio parent is a member

Child Custody Proceeding

[25 U.S.C §1903(1)]

Emergency Proceeding

Involuntary Proceeding

Status Offense Proceeding

Voluntary Proceeding

Indian Child Welfare Act of 1978

- Congress recognized the important role of tribes in protecting the well-being of Indian children and keeping children connected with their tribal community and culture
- It also recognized that tribes had an interest in keeping children part of their communities if they are to survive and thrive in the future

Indian Child Welfare Act of 1978

□ Tribal rights

- Right to Notice
- Right to Intervene
- Right to have case transferred to tribal court (subject to certain exceptions)
- Exclusive jurisdiction over children resident and domiciled on the reservation or wards of the tribal court (except for limited circumstances)

Additional Tribal Role in ICWA

- Determination of Membership
- Collaboration regarding Active Efforts, Services and Supports to Families, and Possible Placements for Children
- Right to establish different placement preferences and define family
- Source of information on cultural and social standards; potential QEWs

Indian Child Welfare Act of 1978

- Emphasis on protecting the rights of biological parents and extended family
- Congress believed that this would advance the best interests of Indian children

Indian Child Welfare Act of 1978 – Rights of parents

- Some of the most important rights are:
 - Active efforts before removal and TPR
 - Higher legal standard must be met before removal of child or termination of parental rights
 - Parents can seek transfer to tribal court or veto transfer
 - Parents can have input into the placement of their children
- First preferred placement in both foster care and adoption cases (involuntary and voluntary) is extended family. Courts must find good cause to deviate from the placement preferences

Indian Child Welfare Act of 1978

□ Connection with tribal community

- Placement preferences (after extended family) – tribal foster homes, tribal families, other Indian families (unless tribe sets its own standards)
- Social and cultural standards of the Indian community to be applied

ICWA Courts

- Pima County – only one currently in Arizona
 - Working with AZ tribes primarily, particularly Pascua Yaqui Tribe and Tohono O’odham Nation
- ICWA courts have:
 - A centralized ICWA docket and trained judges, attorneys and social workers (spirit and letter of law)
 - Focus on tribal collaboration and engagement
 - Solution-oriented, working to keep families together
 - Trauma-informed engagement with children and families
 - Professionals dedicated to gold standard practices

COVID- 19 Impact

- High Covid-19 rates in tribal communities have had a negative effect on some tribal government activities; both tribal workers and tribal judges have died from Covid
- As with all cases, providing services to facilities and visitation between children in foster care and parents has been more complicated – particularly important given the active efforts requirement in ICWA
- On the positive side, courts have become more accustomed to facilitating remote access to hearings which over the long term may increase the ability of tribes (particularly those outside AZ) to participate in court proceedings

For Further Information

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