

Proposed ICWA Guidelines  
Department of Interior Hearings  
Albuquerque, New Mexico  
May 5, 2015

My name is Evelyn Blanchard. I am not employed by any tribal, public or private agency but provide services as an independent consultant to families and tribes who are involved in tribal and state child custody proceedings . Currently I am admitted to the Laguna Tribal Court as an advocate. My comments are concerned with the definition and application of active efforts.

My association and knowledge of the Indian Child Welfare Act stem from its earliest days of development and passage. The impetus for the Act responded to the unwarranted removal of Indian children from their families, caretakers and tribes and the harmful retention of children in state custody beyond the time when harm to the child might occur. The failure of the Bureau of Indian Affairs to dedicate effort to a constructive and viable definition of active efforts has resulted in serious confusion and damaging experiences for children and their families. The proposed guidelines regarding active efforts do not bring sufficient clarity to actions that must be taken to prevent the breakup of the Indian family. Child removal has long-lasting consequences to both children and their families as evidenced by the considerable attention being given to issues of historical trauma and are highlighted by the actions of state agencies, i.e., in Oglala Sioux Tribe vs. Hunnuck in which the child's extended family is not given the opportunity to provide the protective environment necessary to maintain the child's sense of security. It is acknowledged and well-understood that every effort must be made to ensure that the child's sense of security must be protected in moments of crisis and that the child's psychological well-being insists that he/she be placed in the least restrictive setting. The Act provides these protections in its requirements that the child be returned to the parents or caretakers when imminent danger to the child no longer exists and the resources of extended family members are brought into play. The implementation of these protections is the initial active effort that must occur. The failure and inability of our state's Children, Youth and Family Department (CYFD) to respond to the active efforts requirements will be discussed in relation to a current case in which I am involved to provide information about the serious problems involved in failure to comply with the law.

On March 23, 2015 day care providers observed a bruise in the form of a handprint on the buttocks of a two-year old Indian child brought to their center. CYFD was notified and the child and his four-year old sister were taken into custody despite the fact that there was no evidence that the four-year old child had been abused or neglected. On March 25, 2015 when the children's maternal grandmother learned that the children were in CYFD custody she made contact with the agency to request that the children be placed in her care in keeping with placement provisions of the law. Her request was denied. The agency's refusal was based on the determination by CYFD investigators that her reservation residence, forty-five miles distant from Albuquerque, was too far away to respond to the children's medical needs. The children had been in custody for only two days and the grandmother was not provided any authoritative information about the children's particular medical needs. She was in regular contact with the children and their parents and was unaware of medical concerns involving either child.

Upon request from the family for my assistance I contacted the CYFD investigative unit to call its attention to the law's placement requirements and the agency's duty to respond in the absence of good cause to contrary. After two appeals to the agency to adhere to the law, I was told that agency staff would not discuss the case with me further. Later I learned from the grandmother that the children had been placed separately and in contradiction to the agency's concern about distance, the older child who was initially placed in a foster home had been transferred to an institution in another city some 250 miles away. The grandmother told me that the children had never been separated and that the older child was very protective of her younger brother. She was told that the older child had been placed in the institution because of her acting out behavior with which the foster family was unable to cope. The agency's decision was confounding. Acting out behavior is not an unusual response to placement especially in view of the protective stance of the older sibling. Additionally, one has to ask why a resource for the child's response could not be found in Albuquerque, the largest city in the state with the greatest number of child care resources. It is also difficult to understand how agency personnel who consistently respond to children in crisis situations failed to give sufficient attention to the children's relationship in the throes of separation trauma from their parents. The agency's actions compounded the separation trauma experienced by the children and contradicted what is known about children's perception of time and space. The actions encouraged a response that must be avoided to guard against the child blaming the self for what has occurred and encouraging a state of confusion and self-doubt and the ensuing loss of a sense of security. Contrary to the law's requirement that the tribal court be notified of an impending child custody hearing, the agency instead made contact with the tribe's social service department director who informed the agency that the tribe would not intervene. The reasons given for nonintervention were that it would be four months before the department could conduct a foster home study of the grandmother's home and that the department did not have funds to support services to the family. In view of the responses of both agencies, one has to ask how are the children's best interests being protected from the damage of separation and placement?

In my experience as an advocate extended and disciplinarily unjustified separation of children from parents is not an unusual response. In this case as in others it appears that the state agency is confused in its role to protect children. Concentration was given to substantiating the abuse allegation which was not difficult in light of the fact that the mother admitted that she used inordinate force in her action to discipline her child. No effort was made by the agency to develop support for the parent that would assure no further harm to the children if they were returned to her in an environment where the threat of imminent danger would no longer exist. Why this could not be accomplished is not known but the refusal to place the children with their grandmother with whom they have a secure loving relationship is unexplainable.

I recommend that the definition of active efforts be strengthened to clarify that they must be initiated at the crucial moment of considered intent to remove a child from the family. This would require an educated assessment of the circumstance that would avoid harm to the child. In an ideal world one could expect that protective services personnel would be adequately trained to look through the frightened eyes of the child rather than a punitive perspective of authority in a pronounced atmosphere of law and order. However, this is not the reality in child protection services where

education about and understanding of the impact of child removal and placement are not requirements. The legacy of uninformed and often biased protective service practice continues to cripple the opportunity of far too many of our people to live productive and satisfying lives. While it is understood that the guidelines are recommendations and are not enforceable, it is imperative that there is clear expectation that active efforts to prevent the breakup of the Indian family be made at the outset of any allegation and investigation of abuse or neglect and the child's right to placement with extended family members is protected.

Respectfully submitted,

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