

Shiprock 32
Mexican Water
Rock Point
Sweetwater
Teec Nos Pos
Aneth
Beulahbito
Rud Valley
Sanostee
Sheepsprings
Shiprock
Two Grey Hills
Cudei
Hogback
Cove
Newcomb
Burnham
Fruitland
Nenahnezah
San Juan
Naschitti

Crownpoint 34
Coyote Canyon
Mexican Springs
Tohatchi
Twin Lakes
Becenti
Crownpoint
Lake Valley
Littlewater
Nahodishgish/Dalton Pass
Pueblo Pintado
Standing Rock
Torreon Star Lake
White Horse Lake
White Rock
Prewitt/Baca
Breadsprings
Casamera Lake
Chilchiltah
Churchrock
Iyanbito
Manuelito
Mariano Lake
Pinedale
Red Rock
Rocksprings
Smith Lake
Thoreau
Tse Ya Toh
Huerfano
Nageezi
Ojo Encino
Counselor
Canoncito
Alamo

Taba City 33
Coppermine
Kaibeto
Lechee
Tonalea/Red Lake
Inscription House
Navajo Mountain
Shonto
Bodaway/Gap
Cameron
Coalmine Mesa
Tuba City
Bird Springs
Leupp
Tolani Lake
Chilchinbeto
Dennehotso
Kayenta
Oljato

Chinle 35
Forest Lake
Hardrock
Pinon
Tahchee/Blue Gap
Whippoorwill
Black Mesa
Low Mountain
Chinle
Many Farms
Nazlini
Rough Rock
Tselani/Cottonwood
Lukachukai
Round Rock
Tsaille/Wheatfield

Fort Defiance 36
Dilkon
Indian Wells
Jeddito
Teestoh
Whitecone
Cornfields
Ganado
Greasewood
Kinlichee
Klagetoh
Steamboat
Wide Ruins
Crystal
Fort Defiance
Houck
Lupton
Oak Springs
Red Lake
St. Michaels
Sawmill

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INDIAN CHILD WELFARE ACT
AGREEMENT BETWEEN THE NEW MEXICO
HUMAN SERVICES DEPARTMENT AND THE
NAVAJO TRIBE

Appendix "D"
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This Agreement made and entered into this 17th day of September, 1985, by and between the Division of Social Welfare, NAVAJO TRIBE, hereinafter referred to as "the NAVAJO TRIBE," and the Human Services Department, STATE OF NEW MEXICO, hereinafter referred to as "the STATE."

I. PURPOSE AND POLICY

A. The Congress of the United States passed the Indian Child Welfare Act of 1978 (P.L. 95-608), November 8, 1978, hereinafter, referred to as the "ICWA".

B. The STATE and the NAVAJO TRIBE recognize: (1) that there is no resource that is more vital to the continued existence and integrity of the Navajo Tribe than its children; (2) that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe; (3) that the STATE has a direct interest in protecting the cultural diversity of the citizens of the State of New Mexico; (4) that this agreement is entered into under the Joint Powers Agreement Act, [§§11-1-1 to 11-1-7 NMSA 1978], acknowledges the April 19, 1984 Statement of Policy signed by the Governor of the State of New Mexico and the Chairman of the Navajo Nation, and is predicated on a government to government relationship between the State of New Mexico and the Navajo Nation in a spirit of cooperation, coordination, communication and good will; (5) that both voluntary and involuntary proceedings are of critical interest to the Navajo Tribe: (a) to prevent the inappropriate cultural separation of Navajo

children from their families; and (b) to insure the placement of all Navajo children in a manner which preserves the unique values of Navajo culture.

C. The STATE and the NAVAJO TRIBE agree that the primary purpose of this Agreement is to protect and further the best interests of the Navajo child. This Agreement, therefore, seeks to promote and strengthen the unity and security between the Navajo child and his or her natural family. The primary considerations in the placement of a Navajo child are to insure that the child is raised within the Navajo culture, that the child is raised within his or her family where possible and that the child is raised as an Indian.

D. The ICWA confirms the exclusive jurisdiction of the NAVAJO TRIBE over any child custody proceeding involving a Navajo child who resides or is domiciled within the Navajo Reservation and over any Navajo child who is a ward of the Navajo tribal court.

E. The NAVAJO TRIBE and STATE support the policy of Section 101(b) of the ICWA to transfer state court proceedings for foster care placement or the termination of parental rights to Navajo children not domiciled or residing within the reservation to the jurisdiction of the tribe upon petition of the NAVAJO TRIBE or the Navajo child's parent or Indian custodian, absent good cause to the contrary. The NAVAJO TRIBE and the STATE recognize that the ICWA provides either parent may object to the transfer of the proceedings.

F. Section 109(a) of the ICWA provides that States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes. The STATE and the NAVAJO TRIBE desire to provide for the orderly transfer of jurisdiction over child custody

proceedings and to enter into an agreement respecting care and custody of Navajo children, in accordance with the provisions of the ICWA.

G. The STATE and the NAVAJO TRIBE support and will in fulfilling the terms of this Agreement act in accordance with the full faith and credit provision contained in Section 101(d) of the ICWA. That section requires that the United States, every State and every Indian tribe give full faith and credit to the public acts, records and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

H. This Agreement shall be construed in the spirit of cooperation and in a manner which protects and promotes the best interests of Indian children and the security of Indian tribes and families. This Agreement shall be interpreted in a manner which reflects the unique values of Indian culture, custom and tradition.

II. GENERAL PROVISIONS

A. The STATE acknowledges that this Agreement binds the the Human Services Department and its local offices to the provisions herein set forth.

B. This Agreement applies to any unmarried child under the age of 18 who is a member of or eligible for membership in the Navajo Tribe and is the biological child of a member of the Navajo Tribe, herein referred to as "Navajo child". The Navajo Tribal Code, 1 N.T.C. §501, defines membership in the Navajo Tribe as the following:

1. All persons of Navajo blood whose names appear on the official roll of the Navajo Tribe maintained by the Bureau of Indian Affairs.

2. Any person who is at least one-fourth degree Navajo blood, but who has not previously been enrolled as a member of the Navajo Tribe, is eligible for Tribal membership and enrollment.

3. Children born to any enrolled member of the Navajo Tribe shall automatically become members of the Navajo Tribe and shall be enrolled, provided they are at least one-fourth degree Navajo blood.

C. For purposes of this Agreement, all definitions contained in the ICWA are applicable and shall be referenced and utilized in the performance of each party's obligations.

D. Determination of membership in the Navajo Tribe shall be the sole responsibility of the NAVAJO TRIBE. Membership inquiries shall be referred by the STATE to the Navajo Contact Office designated in Section III.B.1. for processing, and a determination of membership shall be conclusive upon the parties. The NAVAJO TRIBE shall process all applications for enrollment in the Navajo Tribe. The NAVAJO TRIBE shall make a determination of membership of a referred minor within ten (10) days from the time sufficient background information is provided to the NAVAJO TRIBE. If insufficient information to verify membership is provided, the NAVAJO TRIBE will request additional information from the STATE in writing within ten (10) days of receiving the inquiry concerning the minor's membership.

E. The STATE will follow the statutory confidentiality restrictions of the New Mexico Children's Code [§§32-1-1 through 32-1-45 NMSA 1978] and Adoption Act [§§40-7-1 to 40-7-11; and 40-7-13 to 40-7-17 NMSA 1978] in performance of its responsibilities under this Agreement. The NAVAJO TRIBE will follow the confidentiality restrictions of the Federal Privacy Act, 5 U.S.C. §552(a), and tribal policies in performance of its responsibilities under this Agreement. The STATE and NAVAJO TRIBE will share information in

any child custody matter where there is a transfer of jurisdiction or cooperative placement efforts. Social services staff of the STATE will testify when necessary in Navajo tribal court upon issuance of a subpoena by the tribal court. Social services staff of the NAVAJO TRIBE will testify when necessary in state court upon issuance of a subpoena by the STATE.

III. NOTICE

A. Type of Proceedings.

1. The STATE shall notify the NAVAJO TRIBE of any instance where the STATE takes physical custody of a Navajo child or of any child custody proceeding commenced by the STATE involving a Navajo child.

2. Notice shall be given of the following:

(a) involuntary proceedings: foster care placements; termination of parental rights; pre-adoptive and adoptive placements;

(b) voluntary proceedings: foster care, pre-adoptive placements, relinquishments and consents to termination of parental rights; and

(c) judicial hearings under the New Mexico Children's Code and Adoption Act.

B. Contact Persons.

1. When a child custody proceeding is commenced in a New Mexico state court concerning a Navajo child, the STATE shall provide notice as required by Section III of this Agreement, to:

THE NAVAJO NATION
Division of Social Welfare
P.O. Box JJ
Window Rock, Arizona 86515

602/871-4941 Ex. 1807 or Ext. 1936

2. When the STATE takes physical custody of a Navajo child, if the child is found in San Juan County, the STATE shall provide notice to the Shiprock Office of the Navajo Nation, Division of Social Welfare, Special Services Unit, P.O. Box 3289, Shiprock, New Mexico 87420, (505) 368-4319, 4320, 4433; if the child is found in McKinley County, Canonicito or Alamo, the STATE shall provide notice to the Crownpoint Office of the Navajo Nation, Division of Social Welfare, P.O. Box 936, Crownpoint, New Mexico, (505) 786-5225, 5300, 5500. If the Navajo child is found in any other county of New Mexico, the STATE shall provide notice as set forth in Section III.B.1. The NAVAJO TRIBE shall provide the STATE with emergency telephone numbers for after-hours and weekend contact. The contact person for the NAVAJO TRIBE shall be a Social Worker IV in the respective offices.

3. The contact persons for the STATE shall be the Office Managers of the San Juan and McKinley County Social Services Offices in New Mexico, or their designees. The addresses and telephone numbers of these offices are:

McKinley County
Social Services Division
2907 East Aztec
Drawer 1300
Gallup, New Mexico 87301
(505) 863-9556

San Juan County
Social Services Division
101 W. Animas
P.O. Drawer I
Farmington, New Mexico 87401
(505) 327-5316
(505) 326-3665 (after hours)

4. The contact person for the STATE for all other county offices shall be the Chief, Field Services Bureau, Social Service Division, P.O. Box 2348 - Room 519, PERA Building, Santa Fe, New Mexico 87504-2348, (505) 827-4266.

5. The emergency telephone number for the STATE for after-hours and weekend contact shall be 1-800-834-3456.

C. Time limits.

1. The STATE, within twenty-four (24) hours (excluding weekends and holidays) of taking physical custody of a child the STATE knows or has reason to know is or may be a Navajo child shall give notice by telephone to the NAVAJO TRIBE's contact person designated in Section III.B.2. above. Within five days of the initial oral notice, the STATE shall give written notice by registered mail, return receipt requested, to the NAVAJO TRIBE's contact person, designated in Section III.B.2. above.

2. The STATE, within twenty-four (24) hours of commencing a child custody proceeding in state court involving a child the STATE knows or has reason to know is or may be a Navajo child shall give notice by telephone to the NAVAJO TRIBE's contact person, designated in Section III.B.1. above. Within five days of the initial oral notice, the STATE shall give written notice by registered mail, return receipt requested, to the NAVAJO TRIBE's contact person, designated in Section III.B.1. above.

D. Contents of Notice.

The oral and written notice shall include the information requested in Appendix A to this Agreement (ICWA Notice), to the extent such information is available. In addition, the following information shall be provided:

1. a copy of the all pleadings in the child custody proceeding;
2. information about the child's circumstances, including the reasons for placement; and
3. identification of any special needs of the child.

IV. JURISDICTION

- A. Exclusive jurisdiction in the Navajo Tribal Court.

1. The NAVAJO TRIBE shall have exclusive jurisdiction over any "child custody proceeding" as set forth in Section III.A.2., involving a Navajo child who resides or is domiciled within the Navajo Reservation. Where a Navajo child is a ward of the Navajo tribal court, the NAVAJO TRIBE shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the Navajo child.

2. The "Navajo Reservation" is defined in the ICWA as all land within the limits of the Navajo Reservation, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Navajo communities within the borders of New Mexico; all Navajo allotments, the Indian titles to which have not been extinguished; including rights-of-way running through same; and any other lands, title to which is either held by the United States for the benefit of the Navajo Tribe or Navajo individuals, or held by the Navajo Tribe subject to a restriction by the United States against alienation.

B. State or tribal jurisdiction.

1. If a Navajo child is not domiciled or residing within the Navajo Reservation and is involved in a state court proceeding for foster care placement or termination of parental rights, a petition for transfer of the proceeding to the tribal court may be filed in state court and jurisdiction shall be determined in accordance with §101(b) of the ICWA. It shall be the policy of the STATE that a petition to transfer by the NAVAJO TRIBE will be favored whenever permitted by the ICWA. It shall be the policy of the NAVAJO TRIBE to request transfer only upon a determination that such transfer is in the best interests of the Navajo child and family. The STATE and the NAVAJO TRIBE agree to work cooperatively in all child custody proceedings to protect the best interests of the Navajo child and his or her natural family.

2. The NAVAJO TRIBE agrees to make every reasonable effort to file a motion to intervene in any child custody proceeding within ten (10) days and a petition to transfer jurisdiction to the Navajo tribal court within twenty (20) days after the NAVAJO TRIBE's contact person receives the written notice, as specified in Section III of this Agreement. If a transfer decision cannot be made by the NAVAJO TRIBE within twenty (20) days, the NAVAJO TRIBE will submit to the STATE in writing their plans for transfer, or reasons why a transfer decision cannot be made at that time and when the NAVAJO TRIBE expects that a decision can be made. A delay in petitioning for transfer or moving to intervene may include that insufficient information has been provided to the NAVAJO TRIBE to verify membership in the Navajo Tribe. If insufficient information to verify membership exists, the NAVAJO TRIBE will request in writing additional information from the STATE within ten (10) days of receiving written notice of the child custody proceeding in the NAVAJO TRIBE contact office designated in Section III.B.1. above.

3. During the twenty (20) day period following the NAVAJO TRIBE's receipt of written notice, representatives of the STATE and the NAVAJO TRIBE may arrange a staffing to discuss whether jurisdiction in the STATE or NAVAJO TRIBE would be in the best interests of the Navajo child. When selection has not been made between state and tribal court jurisdiction, the STATE shall proceed in accordance with the New Mexico Children's Code and Adoptions Act until such time as jurisdiction is transferred to the NAVAJO TRIBE; provided, however, that the STATE shall inform the NAVAJO TRIBE of all proceedings and staffings as provided in Section IV.B.4. below.

4. If the NAVAJO TRIBE declines jurisdiction in a particular case, the STATE shall continue to inform the NAVAJO TRIBE about the state court proceedings involving the Navajo child by providing the NAVAJO TRIBE with

copies of all motions, notices of hearing and orders filed in that case. A summary of casework activities shall be provided to the NAVAJO TRIBE every six months. In addition, the STATE shall give the NAVAJO TRIBE reasonable and adequate notice of all STATE staffings and the opportunity to participate fully in those staffings. The STATE and NAVAJO TRIBE shall cooperate in casework to the maximum extent possible, but the entity with jurisdiction over the Navajo child shall have the primary responsibility for casework.

5. Where a state court intends to dismiss a child custody proceeding for lack of jurisdiction, the STATE shall notify the NAVAJO TRIBE before the case is dismissed. In such cases, the STATE shall contact the NAVAJO TRIBE's contact person designated in Section III.B.1. above.

6. When the STATE has jurisdiction of a case involving a Navajo child residing within the Navajo Reservation, STATE social workers shall be permitted to enter the Navajo Reservation to provide appropriate social services to that child and his/her family. When the NAVAJO TRIBE has jurisdiction of a case involving a Navajo child residing off the Navajo Reservation, NAVAJO TRIBE social workers shall be permitted into New Mexico to provide appropriate social services to that child and his/her family. Arrangements may also be made in other individual cases to provide social services on or off the Navajo Reservation by the STATE and the NAVAJO TRIBE where such arrangements will be in the best interests of the child and/or family being served. STATE social workers may request the assistance of Navajo police in appropriate circumstances. NAVAJO TRIBE social workers may request the assistance of State, County, or City police in appropriate circumstances. Whenever required, upon subpoenas, STATE social workers will testify in Navajo tribal court and NAVAJO TRIBE's social workers will testify in State court.

V. PLACEMENT PREFERENCES

A. In all pre-adoptive, adoptive, or foster care placements under state law, the preferences and standards for placement provided in Section 105 of the ICWA shall apply in the absence of good cause to the contrary.

1. For adoptive placement, the placement preferences in order of priority are:

- a. a member of the Navajo child's extended family;
- b. other members of the Navajo Tribe; or
- c. other Indian families.

2. For foster care or pre-adoptive placement, the placement preferences in order of priority are:

- a. a member of the Navajo child's extended family;
- b. a foster home licensed, approved or specified by the NAVAJO TRIBE;
- c. an Indian foster home licensed or approved by the STATE; or
- d. an institution for children approved by the NAVAJO TRIBE or operated by an Indian organization which has a program suitable to meet the Navajo child's needs.

3. Navajo custom and law regarding custody and placement of Navajo children shall also be utilized in the placement of Navajo children. Questions of Navajo law or custom shall be certified to the Judicial Branch of the Navajo Nation, Attention: Solicitor, P.O. Box 447, Window Rock, Arizona, 86515 for a written opinion. The Navajo child shall be placed within reasonable proximity to his or her home where appropriate.

B. Any Navajo child placed for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met; the child shall be placed within reasonable proximity to his or her home, taking into account any special needs of the child.

C. In any proceeding in which the STATE is unable to arrange compliance with the ICWA placement preferences pursuant to Section 105 of the ICWA, the STATE shall prepare a report evidencing its efforts to comply with the order of preference and shall send it to the NAVAJO TRIBE'S contact person designated in Section III.B.1. above within five (5) days (excluding weekends and holidays) of the placement.

D. In the placement of a Navajo child, the preference of the child's parent(s) shall be considered where such preference is appropriate. It shall be considered inappropriate for the parents of a Navajo child to request that their child not be placed in a Navajo or Indian home.

E. The request of a parent of a Navajo child to remain anonymous shall be honored by the STATE and NAVAJO TRIBE; however, it is understood that anonymity applies only to the parent's extended family. The request of a parent to remain anonymous shall not outweigh the right of a Navajo child to be raised within the Navajo culture or Native American culture.

VI. CHILD PROTECTIVE SERVICES

A. The STATE shall be primarily responsible for receiving and investigating reports of suspected child abuse or neglect concerning Navajo children who are found off the Navajo Reservation. The NAVAJO TRIBE shall be primarily responsible for receiving and investigating reports of suspected

child abuse or neglect concerning Navajo children and non-Navajo Indian children who reside or are located within the Navajo Reservation. However, upon receiving a report of suspected child abuse or neglect, either the STATE or the NAVAJO TRIBE shall take immediate steps to investigate the report and insure the safety of the child even though there may be a question as to whether the child resides on or off the Navajo Reservation or whether the child is Navajo or non-Navajo.

B. If the NAVAJO TRIBE receives a referral for child protective services concerning a non-Indian child who resides on the Navajo Reservation, the NAVAJO TRIBE shall do the preliminary investigation and take whatever action is necessary to insure the immediate safety of the child. The case will then be referred by telephone, with written confirmation following, to the appropriate STATE Social Services Division Office as provided in Section III.B.3. above, within twenty-four (24) hours, excluding weekends and holidays. The NAVAJO TRIBE shall be responsible for payment for custodial care for the child for the first twenty-four (24) hours. Where required, child protective service workers from the NAVAJO TRIBE will testify in STATE court to substantiate the initial removal of the child from his/her home. Primary responsibility for follow-up treatment and services to the non-Indian child and his/her family will lie with the appropriate STATE county office, unless representatives of the NAVAJO TRIBE and the STATE mutually agree upon other arrangements at a staffing held within twenty (20) days after the STATE's receipt of written confirmation.

C. If the NAVAJO TRIBE receives a referral on a non-Navajo Indian child who is found within the reservation but does not reside therein, the NAVAJO TRIBE shall do the preliminary investigation and take whatever action is necessary to insure the immediate safety of the child. The child will then be

referred by telephone, with written confirmation following, to the appropriate STATE Social Services Division offices as provided in Section III.B.3. above or the appropriate tribe within twenty-four (24) hours, excluding weekends and holidays. The NAVAJO TRIBE will be responsible for the cost of custodial care of the child for the first twenty-four (24) hours of care. Where required, child protective service workers from the NAVAJO TRIBE will testify in STATE court to substantiate the initial removal of the child from his or her home.

D. In order to prevent imminent physical damage or harm to a Navajo child, the STATE shall take emergency custody of a Navajo child under New Mexico law and the ICWA if the child resides or is domiciled within the Navajo Reservation, but is temporarily located off the reservation. A referral will be made of the case within twenty-four (24) hours, excluding weekends and holidays, by the STATE to the appropriate NAVAJO TRIBE's contact person designated in section III.B.2. The STATE shall be responsible for the Navajo child, including payment to the shelter on behalf of the Navajo child, for the first twenty-four (24) hours. The NAVAJO TRIBE will make arrangements to assume custody of the Navajo child who is a resident or domiciliary of the Navajo Reservation within twenty-four (24) hours, excluding weekends and holidays, after referral, if the child is found within San Juan County or McKinley County or will assume responsibility for the cost of care after the first twenty-four (24) hours until arrangements can be made to assume custody of the Navajo child. The NAVAJO TRIBE will make reasonable efforts to assume custody of the Navajo child if found in an area other than San Juan County or McKinley County and will assume responsibility for cost of care after the first twenty-four (24) hours until arrangements can be made to assume custody of the Navajo child. If a Navajo child who resides and is domiciled off the Navajo Reservation is placed by the STATE in emergency care, the STATE shall

be responsible for that Navajo child, including payment for shelter care on behalf of the child.

E. Regardless of the Navajo child's residency, if a Navajo child is placed by the STATE into an emergency shelter, and the Navajo child's family has requested the Navajo child to be released to them on a weekend or after-hours, if it would work a hardship on the Navajo child's family not to release the Navajo child at that time and if there is no evidence of significant abuse, upon notification to and approval by the STATE's on-call social worker, the Navajo child shall be released to his/her family. The STATE shall notify the NAVAJO TRIBE's contact person designated in Section III.B.2. above on the next working day. The STATE shall make payment on behalf of the Navajo child to the emergency shelter. If the STATE determines that it would not be in the best interest of the Navajo child to release him/her to family members upon their request, then the STATE shall retain physical custody of the Navajo child in the emergency shelter and the payment provisions of Section VI.D. above shall apply.

F. If a Navajo child is taken into the STATE's custody during normal working hours and the STATE has determined that the child should be released to his or her family, the STATE may release the Navajo child to his or her family in less than twenty-four (24) hours provided that the STATE has conferred with or made reasonable efforts to confer with the NAVAJO TRIBE's contact person designated in Section III.B.2. to determine whether there is an open case concerning that child. The STATE shall be responsible for the Navajo child, including payment to the shelter on behalf of the Navajo child for the first twenty-four (24) hours of care. If the NAVAJO TRIBE does not want the Navajo child released to his/her family the NAVAJO TRIBE shall proceed in accordance with the provisions Section VI.D.

VII. FOSTER CARE AND PRE-ADOPTIVE PLACEMENTS

A. The STATE shall recognize foster homes certified, approved or licensed by the NAVAJO TRIBE as meeting the foster home licensing requirements under state law and the NAVAJO TRIBE shall recognize STATE foster home licensing as meeting the requirements of the NAVAJO TRIBE. The STATE may place Navajo children in foster homes licensed by the NAVAJO TRIBE and the NAVAJO TRIBE may place Navajo children in foster homes licensed by the STATE if such placement is mutually agreed upon by the STATE and the NAVAJO TRIBE.

B. Upon taking custody of a Navajo child, the STATE shall assume responsibility for all costs of foster care (in both foster homes licensed by the NAVAJO TRIBE and the STATE), supervision and social services, until jurisdiction of the matter is transferred to the NAVAJO TRIBE, at which time the NAVAJO TRIBE shall assume responsibility for all such costs, subject however, to the emergency shelter care provisions of Section VI. above.

C. Upon taking custody of a Navajo child, the NAVAJO TRIBE shall assume responsibility for all costs of foster care (in both foster homes licensed by the NAVAJO TRIBE and the STATE), supervision, and social services, until such time as jurisdiction of the matter is transferred to the STATE, at which time the STATE shall assume responsibility for all such costs.

D. The STATE and the NAVAJO TRIBE shall coordinate efforts in locating the most suitable foster care and pre-adoptive placement for Navajo children in accordance with the placement preferences described in the ICWA and according to Navajo custom.

E. The NAVAJO TRIBE shall utilize its own foster care licensing, approval or certification standards in determining the suitability of homes to provide foster care on the Navajo Reservation and its own procedure for the

approval of Indian foster homes. The NAVAJO TRIBE will provide the STATE with a copy of foster care licensing standards and procedures utilized by the NAVAJO TRIBE to license foster care homes on the Navajo Reservation, and will provide a copy of changes in foster care licensing standards and procedures within thirty (30) days after the effective date of such changes.

F. The STATE agrees that in the event a Navajo child is placed in the legal custody of the STATE and that Navajo child is placed in a licensed foster home of the NAVAJO TRIBE while in the legal custody of the STATE, the STATE shall pay the costs of foster or pre-adoptive care in the same manner and to the same extent as the STATE pays the costs of foster care to STATE licensed foster homes and shall proceed to manage the case in accordance with applicable state law and the ICWA. The NAVAJO TRIBE will assist the STATE in working with the Navajo foster parents and in management of the case when requested.

G. The NAVAJO TRIBE agrees that if it is necessary for a Navajo child in the legal custody of the STATE to be removed from a foster home licensed by the NAVAJO TRIBE or located on the Navajo Reservation either due to an order of a state or tribal court or due to a determination that removal is in the best interests of the Navajo child and the removal is recommended by a staffing between the STATE and NAVAJO TRIBE, the NAVAJO TRIBE will assist in removing the Navajo child from the Navajo Reservation and transferring physical custody of the child to the STATE.

H. The STATE agrees that if it is necessary for a Navajo child in the legal custody of the NAVAJO TRIBE to be removed from a foster home licensed by the STATE either due to an order of a state or tribal court or due to a determination that removal is in the best interests of the Navajo child and the removal is recommended by a staffing between the STATE and NAVAJO TRIBE,

the STATE will assist in removing the Navajo child from the foster home and transferring physical custody of the child to the NAVAJO TRIBE.

I. The supervision of the placement of a Navajo child by the STATE in a foster home licensed by the NAVAJO TRIBE shall be a cooperative effort between the STATE and the NAVAJO TRIBE. Any change in such placement shall be made pursuant to a staffing between the STATE and the NAVAJO TRIBE.

J. The supervision of the placement of a Navajo child by the NAVAJO TRIBE in a foster home licensed by the STATE shall be a cooperative effort between the STATE and the NAVAJO TRIBE. Any change in such placement shall be made pursuant to a staffing between the STATE and the NAVAJO TRIBE.

K. The NAVAJO TRIBE shall notify the STATE within twenty-four (24) hours from the time the NAVAJO TRIBE becomes aware of any emergency situation involving the care or well-being of a Navajo child placed by the STATE in a foster home licensed by the NAVAJO TRIBE. The NAVAJO TRIBE shall notify the Office Managers of the respective County Social Services offices in New Mexico or their designees, as provided in Section III.B.3. above or contact the STATE by use of the emergency telephone number provided in Section III.B.5. if the emergency situation occurs after-hours or on a weekend. Provided, however, that the NAVAJO TRIBE shall take whatever steps are necessary to insure the well-being of the child until the STATE can assume its responsibility.

L. The STATE shall notify the NAVAJO TRIBE within twenty-four (24) hours (excluding weekends and holidays) from the time the STATE becomes aware of any emergency situation involving the care or well-being of a Navajo child placed by the STATE or the NAVAJO TRIBE in a foster home licensed by the STATE. The STATE shall place the Navajo child in emergency foster care. The STATE shall notify the NAVAJO TRIBE's agency offices as

provided in Section III.B.2. above. Provided, however, that the STATE shall take whatever steps are necessary to insure the well-being of the child until the NAVAJO TRIBE can assume its responsibility. The NAVAJO TRIBE shall provide the STATE with an emergency telephone number for after-hours and weekend contact.

VIII. ADOPTIVE PLACEMENTS

A. The parties to this Agreement shall coordinate efforts in locating suitable adoptive families for Navajo children.

B. The NAVAJO TRIBE shall with the authorization of the applicants provide the STATE with the names and home studies of prospective adoptive homes on the Navajo Reservation, in order to assist the STATE in complying with the placement preferences established in Section 105 of the ICWA and those of Navajo tribal custom. The STATE may conduct home studies of prospective adoptive homes located on the Navajo Reservation.

C. A request for anonymity from extended family members by parents who are placing their children for adoption shall be honored by both the STATE and NAVAJO TRIBE, but such request shall not override the basic right of a Navajo child to be raised within Navajo culture or Native American culture.

D. This section applies to both voluntary and involuntary placements.

E. All petitions for independent adoptions will be reviewed by the STATE to determine to the best of the STATE's ability given the information presented whether a Navajo child is involved. If such a child

is involved, the STATE shall oppose waiver of the placement requirements unless there has been compliance with the ICWA placement preferences.

IX. CHANGES AND CANCELLATION OF AGREEMENT

A. Any provision of this agreement may be altered, varied, modified, or waived only if such alteration, modification or waiver is: 1) reduced to writing; 2) signed by authorized representatives of both parties; and 3) attached to the original of this Agreement.

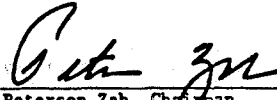
B. This Agreement may be cancelled by either party at any time after one hundred eighty (180) days written notice of the intent to cancel has been given to the other party. Such cancellation shall not affect any action or proceeding over which a court has already assumed jurisdiction.

X. EFFECT OF PRIOR AGREEMENTS


This Agreement supercedes all prior written and oral agreements, covenants and understandings between the STATE and/or its county offices and the NAVAJO TRIBE concerning the subject matter described herein.


IN WITNESS WHEREOF, THE PARTIES HERETO HAVE SIGNED THIS AGREEMENT this

17th day of September, 1985.


Peterson Zah, Chairman
Navajo Tribe



Toney Anaya, Governor
State of New Mexico


Wilfred D. Yazzie, Executive Director
Division of Social Welfare, Navajo Tribe

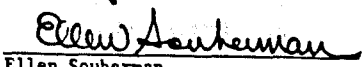
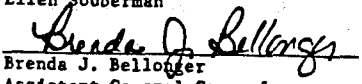

Juan R. Vigil, Secretary
New Mexico Human Services
Department

In accordance with the applicable laws, this Agreement has been reviewed by the undersigned who have determined that this Agreement is in appropriate form and within the powers and priority granted to each respective public body.

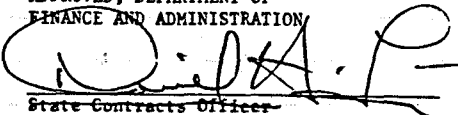
Date: Sept. 16, 1985


Claudeen Bates Arthur
Attorney General for the Navajo Nation
Navajo Nation
P.O. Drawer 2010
Window Rock, Arizona 86515

Date: September 17, 1985


Ellen Souberman

Brenda J. Bellinger
Assistant General Counsel
Office of General Counsel
Human Services Department
P.O. Box 2348
Santa Fe, New Mexico 87503

APPROVED, DEPARTMENT OF
FINANCE AND ADMINISTRATION


State Contracts Officer

Date: 10-11-85

ICWA NOTICE

1. Information on the child is as follows:

- a. Name: _____
- b. Present residence: _____
- c. Place of birth: _____
- d. Date of birth: _____
- e. When child was taken into custody: _____
- f. Where child was taken into custody: _____
- g. Tribal affiliation: _____
- h. Tribal census or enrollment number: _____

2. Information on the parents is as follows:

- A.
 - a. Mother: NAME: _____ Maiden Name: _____
 - b. Permanent Address: _____
 - c. Current Address: _____
 - d. Place of Birth: _____
 - e. Date of Birth: _____
 - f. Tribal affiliation: _____
 - g. Tribal enrollment or census number: _____
- B.
 - a. Father: NAME: _____
 - b. Permanent Address: _____
 - c. Current Residence: _____
 - d. Place of Birth: _____
 - e. Date of Birth: _____
 - f. Tribal Affiliation: _____
 - g. Tribal enrollment or census number: _____

C. If these are not the natural parents, please supply the same information on the natural parents: _____
_____D. Please supply the names of relatives, other family names, and other information about the extended family that will aid in identification:

3. The petitioner in this proceeding is:

- a. Name: _____
- b. Address: _____ Phone: _____
- c. Title: _____

4. The social worker for the state in this proceeding, if not the petitioner

- is: a. Name: _____
- b. Address: _____
- c. Phone: _____

5. The attorney for the petitioner is:

- a. Name: _____
- b. Address: _____
- c. Phone: _____

6. A petition concerning the named children has been filed in the Children's Court for _____ County, State of _____, Cause No. _____.

A hearing is scheduled in this matter on _____, 198_, at _____ (am)(pm), before the Honorable _____.

The address of the court is _____.

The phone number of the court is _____.



THE NAVAJO NATION

PETER MacDONALD, CHAIRMAN
THE NAVAJO TRIBAL COUNCIL
JOHNNY R. THOMPSON, VICE CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

DIVISION OF SOCIAL WELFARE
Post Office Drawer JJ
Window Rock, Arizona 86515

December 4, 1987

The Honorable Daniel K. Inouye, Senator
SH-722 Hart Senate Office Building
Washington, D.C. 20510-1102

Dear Senator:

On November 10, 1987, while I was testifying at the Senate Select Committee Oversight Hearing on the Indian Child Welfare Act, Senator Dennis De Concini asked me specific questions concerning the incidence of private adoptions among Navajos. This I believe was in response to our request that the Act be clarified to specifically apply to private adoptions.

Unfortunately, when the Tribe does not receive notice of an adoption as mandated by the Act, which is all too often the case with private adoptions, we have no way to assert our rights guaranteed by the Act nor are we capable of quantifying the scope of problem.

The following numbers are based only on these case and instances where for various reasons the Tribe has been informed that a private adoption has occurred. This has generally occurred after the adoption has been finalized.

Prior to 1980, when the Navajo Nation formally implemented its ICWA program, we know of 19 adoptions. These are based on contact

from individuals who claim to have been adopted and are seeking enrollment as a member of the Navajo Tribe, or some other assistance from the Tribe.

Since 1980 there are another 31 instances of private adoptions that have occurred and the Tribe did not receive the requisite notice as required by the ICWA. Our ICWA Program staff has become aware of these 31 instances through the following means:

- a. Relatives who were aware of pregnancies within their extended families and became concerned when the child to be born was never seen by the extended family;
- b. adoptive parents wishing to enroll the child for benefits from the Navajo Nation;
- c. adoptive parents who relinquish parental rights or seek assistance from the Tribe when Navajo adoptees begin experiencing behavior problems;
- d. the thorough screening by the State of Arizona's Interstate Compact Office in Phoenix, Arizona.
- e. natural parents who regret relinquishing rights for adoption after the fact of the adoption.
- f. concerned citizens who report Navajo children appearing to be out place or maltreated.

There are undoubtedly numerous other private adoptions which have occurred since the passage of the ICWA, to which the Navajo Nation has no knowledge of or information on. It is precisely this fact which supports our request that your Committee take action to make it patently clear the notice provisions of the ICWA are fully applicable to private adoptions. The failure of

individuals and courts providing notices to Indian tribes in this situation, limits a Tribe's ability to assert its rights created by the ICWA.

I trust that this information points out the need for clarifying the application of the ICWA with regard to private adoptions, and is a partial answer to Senator De Concini's questions which arose during the hearing on November 10, 1987. Finally attached also is a copy of my verbal testimony as requested during the hearing.

Sincerely,

Anslem Roanhorse
 Anslem Roanhorse
 Executive Director

AMERICAN INDIAN

3407 W 6 St., Suite 510, L.A., CA 90020 (213) 738-4204 (4202)

MENTAL HEALTH TASK FORCE

November 10, 1987

Senator Daniel Inouye
Senate Select Committee Indian Affairs
Senate House 838
Washington, D.C. 20510

Dear Senator Inouye:

The American Indian Mental Health Task Force is a southern California grass roots organization concerned about the mental health and welfare of the Indian community, particularly Indian children and families. The task force is comprised of members from the following Indian community organizations:

Southern California Indian Centers
L.A. County Dept. Mental Health, Amer. Indian Program Development
L.A. County Dept. Child Services (DCS), Amer. Ind. Child Services Workers
Escondido Indian Child Welfare Consortium
L.A. Indian Free Clinic
Southern California American Indian Psychologists
and other community members

Following is our testimony regarding the Indian Child Welfare Act of 1978:

TESTIMONY RE ICWA

Today 63% of American Indians live in cities, and Los Angeles County is home to the largest urban Indian community, the second largest Indian community in the nation. Members from over 200 different tribes now live in this area. Three fifths of all urban Indians live below the poverty level, and in Metropolitan Los Angeles the unemployment rate for American Indians is 45%. Indians have the highest high-school drop out rate (23%), and if you include the number of students who never enter high school, this figure increases to an estimated 65%. Substance abuse is highest for

ICWA Testimony (L.A.)

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Indians vs. other ethnic minorities. Indian children suffer from mental illness at a rate of 20% to 25%.

These factors combined with other psychosocial stressors leave urban Indians at high risk for mental illness and impaired ability to care for families and children. It is estimated that 1 out of every 46 Indian children in Los Angeles is placed within the custody of the Juvenile Dependency Court. This figure does not include Indian children who are put up for adoption or placed out of the home in other institutions.

A 1985 study estimated an 85% ICWA non-compliance rate within the state of California. It has been our experience that compliance is elevated with the careful monitoring of governmental services by Indian run, ICWA programs.

In Los Angeles there currently is identified 206 Indian children within the DCS system, 99 of whom are placed outside of their family homes. Since identification of Indian children is a severe problem and past history indicates that the error rate might be as high as 100%, it appears that 200 Indian children in placement may be a more accurate figure.

Providing the appropriate, federally-mandated services is violated in many ways:

(1) Misidentification of Indian children is a severe problem because many have Spanish surnames, phenotypically are Anglo, or do not have a descriptive surname. Many times children are identified as Indian after they have been in the system for years. Late identification can result in dismissal of the case for improper procedures.

(2) Panel attorneys and the County Counsel have little knowledge about ICWA, and they perceive this legislation to be a tool of manipulation for the parents. Most of the attorneys are reluctant to do the extra work involved. In Los Angeles County, there is only one attorney who willingly works on ICWA cases.

(3) Private attorneys are frequently ignorant of ICWA law or chose not to follow it by instructing clients to not let the state social worker know of the Indian heritage of the child up for adoption.

(4) Childrens Services Workers (CSWs) are sometimes prejudiced and intentionally violate ICWA. At a child abuse workshop, 3 CSWs openly admitted that they would intentionally violate ICWA because they believed that it would be detrimental to the welfare of the child to give a tribe the opportunity to take jurisdiction and thus jeopardize the child's chance for a "good, mainstream education." Although notified in writing, their supervisor never responded.

(5) ICWA training results in improved communication between government workers and the local Indian community, more appropriate utilization of community resources, and increased ICWA compliance.

(6) Inadequate funding for legal services affects all aspects ICWA cases and prolongs cases as well as resulting in the permanent loss of Indian children to their families and their tribes.

(7) In Los Angeles there are no mental health services available which have been designed to meet the unique cultural needs of Indian people. Even when Indian people do utilize the County services,

they generally do not return because the services are insensitive to their needs.

For example: An Indian woman spanked her children abusively because they had been playing with matches and accidentally set the couch on fire. The mother, after putting out the fire, was extremely aroused and for the only time in her life did not have the impulse control needed as that time. Torn by guilt, she telephoned the Child Abuse hot line for information on counseling services. All 3 of her children were put into a foster home. She was told she had to go for therapy in order to get her children back. She went to the County mental health agency near her. The intake clinician was totally insensitive to the cultural issues involved, never sought consultation even though there was an Indian clinician in her agency who had provided cultural awareness training one month prior and asked to be consulted on all Indian cases. When the mother did not return, the worker sent her a terse, formal letter. The case went into permanency planning, because the mother had not received the Court mandated therapy. Fortunately, the CSW had just learned about the BIA-ICWA program. The family is reunited, and is no longer under the jurisdiction of the Dependency Court.

It is probable, as it is in many Indian cases, that if there had not been the ICWA program at that time, that those children would have been permanently removed from their mother.

Today, the Bureau of Indian Affairs chooses to determine that mental health psychological services are not fundable by their programs, even though such services are mandated in most cases by the courts.

ICWA Testimony (L.A.)

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And rightly so. These services are what enables parents to raise their level of functioning so that they can adequately care for their children. Not only should all ICWA programs contain funds for psychotherapy services, including psychological testing, but this should be spelled out as part of the definition of remedial, preventative and reunification services.

Although there is no hard data, American Indian clinicians, social workers and psychologists, agree that the most frequent psychological diagnosis is major depression that has evolved from the long history of removal of Indian children from their homes. This removal has disrupted the bonding process prerequisite for a healthy developmental process. Depression is frequently masked by substance abuse; it is frequently so debilitating that parents are unable to get out of bed to care for their children or necessary business. It is estimated that in L.A. about 80% of Indian parents whose children are removed from the home wind up homeless. This makes reunification even more difficult.

Although the population of American Indians in Los Angeles is only .6% (six tenths of one percent), 5.5% of the Skid Row homeless are American Indians. Furthermore, over 1/3 of Indians served by Native American Housing, an emergency housing program, are children. Yet only about 3% of Indians achieve stable housing. These families are at high risk for having their children removed. Urban ICWA programs must include case management and mental health services to these high risk people as well.

ICWA Testimony (L.A.)

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The unavailability of Indian foster and adoptive homes, particularly in urban areas contributes to the erosion of Indian culture throughout the United States.

In the Los Angeles dependency system, there are children from tribes from coast to coast. Some of the children are full bloods; others are not. Some children are over 25% Indian but not eligible for enrollment because a tribe is matrilineal vs. patrilineal, or the child is not of sufficient blood quantum in any particular tribe. These Indian children must be protected by the Indian Child Welfare Act. Even if no tribe wants to take jurisdiction, the children can be placed in Indian foster homes and qualify for ICWA remedial, preventative and reunification services. Additionally, Canadian Indians must be recognized as qualifying for ICWA programs, as a result of the Jay Treaty.

The State of California has more Indians than any other state, yet only 11 counties are covered by ICWA programs. Few directors of county Departments of Mental Health have even heard of the Indian Child Welfare Act. ICWA must spell out that urban Indian communities are entitled to funding for ICWA programs. To ignore 63% of the Indian population is to contribute to the genocide of Indian people. Additionally, no group, Mormon or otherwise, should be exempt from ICWA restrictions.

The Indian Child Welfare Act is one of the most significant pieces of pro-Indian legislation. However, it accomplishes nothing if it is not backed by funding to accomplish its goals. Certainly, by providing extremely inadequate funding, as is now the case, the

ICWA Testimony (L.A.)

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government perpetuates inter-tribal conflict and conflict between reservation and urban communities. If that is the goal of Congress, they are doing a good job.

There are many ways in which adequate funding can be achieved. There can be included in the ICWA the mandate for states to provide funds for adequate ICWA programs on the county levels. The California State Conditional Release Program is an example of how that can be done. Congress can increase the BIA budget for adequate ICWA funding. We recommend that the Title II of the Indian Child Welfare Act be included as an entitlement program under the Social Security Act.

In conclusion, we recommend that:

- (1) ICWA funding be expanded to include urban programs, and that each urban, rural and reservation community assess their ICWA needs and receive funding based on need.
- (2) ICWA programs include monies for: (a) adequate legal representation; (b) adequate mental health, case management and psychological services, as part of preventative, remedial and reunification services; (c) services for homeless Indian families as part of preventative services; (d) the development of adequate foster and adoption resources; and (e) training programs and dissemination of materials.
- (3) Any Indian child, Canadian or U.S., who is 25% Indian or more be eligible for ICWA programs regardless of enrollment status.

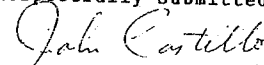
ICWA Testimony (L.A.)

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- (4) That no special interest group be exempt from ICWA restrictions.
- (5) That the Title II of the ICWA be included as an entitlement program under the Social Security Act.

Thank you for your kind attention.

Respectfully submitted,



John Castillo, M.S.W.
Chairman, American Indian Mental Health Task Force, Southern Ca.
Chairman, Indian Child Welfare Task Force, L.A.
American Indian Employment & Training, Southern Ca. Indian Center



Three Feathers Associates

P.O. Box 5508
Norman, Oklahoma 73070
(405) 360-2919

TESTIMONY TO THE
UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS
SENATOR DANIEL K. INOUE, CHAIRMAN

OVERSIGHT HEARINGS
ON THE
INDIAN CHILD WELFARE ACT, P.L. 95-608

BY
ANTONIA DOBREC, PRESIDENT
& DIRECTOR OF PROJECTS
THREE FEATHERS ASSOCIATES
NORMAN, OKLAHOMA

JANIE M. BRADEN,
FAMILY COURT SERVICES COUNSELOR

THURMAN L. WELBOURNE, MSW
FAMILY COURT SERVICES COUNSELOR

November 10, 1987

Mr. Chairman and Members of the Committee:

Three Feathers Associates is honored to present its assessment of the Indian Child Welfare Act and to provide the Senate Select Committee on Indian Affairs with our recommendations for addressing issues that affect the full implementation of the Act and the provision of child welfare services to Indian children and their families.

My name is Thurman Welbourne. I am employed by Three Feathers Associates as a Family Court Services Counselor for the Court of Indian Offenses. The Court provides judicial services for 13 tribes and serves as the Appellant Court for 6 tribes within the Anadarko Service Area for the Bureau of Indian Affairs.

With me today, is Janie Braden. Ms. Braden also serves as a Family Court Services Counselor. Ms. Dobrec, President of Three Feathers Associates and Director of Projects is unable to be with us today because of prior business commitments.

Three Feathers Associates has been actively involved in providing training and technical assistance for Indian tribes and organizations since 1981. Currently, TFA

- <> serves as the only Indian Head Start Resource Center and Resource Access Project in the Nation;
- <> operates the American Indian Child Welfare Training and Technical Assistance Program, which provides training and technical assistance in child welfare services with a concentration in child protective service, foster care services, youth services and child sexual abuse;
- <> has been working with CSR, Incorporated, Washington D.C., as the sub-contractor in the National Study of the Implementation of the Indian Child Welfare Act and the Adoption Assistance and Child Welfare Act of 1980; and,
- <> has developed and implemented the Family Court Services Program for the Court of Indian Offenses, Anadarko, Oklahoma.

Based upon our knowledge and experience in working with over 300 tribes and Indian organizations, and our direct experience in providing child welfare services for Indian children, families and juveniles, we present our issues and recommendations. The large-scale intrusion of outside systems into Indian parent-child relationships and the separation of Indian children from their families and communities by public and private child welfare workers has been documented (American Association on Indian Affairs, 1976, University of Denver, Denver, Colorado, 1976).

As a result of the findings of these two groups and efforts of concerned Indians, non-Indians and other organizations, the 1978 Indian Child Welfare Act has become the most significant piece of legislation affecting American Indian families passed by the United States Congress. Within 350 days, the ICWA will be 10 years old (November 8, 1988). We do believe, it now can be said, that the Act has been tested. States and tribes have experienced failures and successes in implementing and following the provisions of the Law. We suggest to the Select Committee on Indian Affairs that consideration be given by the U.S. Congress to amend the Act.

Through substantive amendments, it is hoped that clarification would be provided to states and tribes' as to their role and responsibility, relating to child custody proceedings (Title I of the Act). Title I, currently, addresses the responsibilities of the states and is generally silent on the responsibilities of the tribes: their roles are implied. Further, Title II, Indian Child and Family Programs and Title III, Recordkeeping, Information Availability, and Timetables would be amended to address the issues we will identify which have inhibited states and tribes in working toward the full implementation of the Act.

The following are issues and recommendations we are submitting for consideration by the Senate Select Committee on Indian Affairs:

1. PROBLEM STATEMENT:

Tribes and their judicial systems are dealing with juvenile delinquency on the local level. The ICWA is silent on the issue of juvenile delinquency which precipitates problems for tribes when juvenile delinquent acts occur with their jurisdictional boundaries. Additionally, state courts and social service agencies are hesitant and do not, generally, assume responsibility for the delinquent acts that occur outside of their jurisdiction. This seems to be reasonable.

Complicating this situation is the Bureau of Indian Affairs interpretation that juvenile delinquency does not fall under the purview of the Act. As a result, tribal child welfare programs (ICWP) are having to address these problems with no provisions provided for within the Act. Further, the general lack of custody provisions, facilities and dollars to support programs for juvenile offenders inhibit the provision of preventative and treatment services for American Indian youth.

Currently, individual ICWPs, CIOs and tribal courts have attempted to develop and address the delinquency problem on a case by case basis. To date, there has been

no coordinated effort among these various systems, that we are aware of, in dealing with this issue. We do believe and have experienced, that an uncoordinated system leads to inconsistencies in the delivery of services to the American Indian youth and their families.

It appears to us that the juvenile delinquency problem is as prevalent within the Indian communities, as is the problem of child abuse and neglect. Unfortunately, we are having to deal with this issue on a second priority basis due to limited funding and the lack of available resources.

RECOMMENDATION: We recommend that provisions addressing the problem of juvenile delinquency in Indian Country be included in the ICWA. Furthermore, these provisions should clearly define the role and responsibilities of the tribal court related personnel in relationship to the tribal/CFR court systems. We contend that this would provide a standardized service approach in meeting the needs of tribal youth and their communities, and facilitate the establishment of protocols for relationships between the various actors in addressing the issue of juvenile delinquency.

2. PROBLEM STATEMENT

The ICWA excludes the involvement of ICWPs in divorce and civil child custody proceedings which come before the tribal and CIO courts. Nevertheless, the reality is that tribal child welfare workers are often ordered by the courts to provide social assessments and recommendations for the best placement of the children involved in such proceedings. We believe that divorce and civil child custody proceedings should be excluded from the Act, but, also, believe that provisions should allow child welfare workers a mechanism for providing the court systems with recommendations that best serves the interest of the child. In most divorce and civil child custody proceedings that we are aware of, indicate that the parties involved, typically, do not have legal representation and, therefore, have no formal method to mediate the issue of child custody. In the absence of legal representation, the courts have no alternative but to order the child welfare workers to conduct an assessment and provide recommendations to help the courts to determine the best placement of the child.

Because of the insufficient number of professionals and support personnel in the tribal and CIO courts, Indian communities often are confused by Indian child welfare workers being involved in child custody proceedings, and assume that ICW staff are responsible for all child custody issues within the court systems.

RECOMMENDATION: Provisions in the Act are critically needed in this area. This would permit tribal and CIO courts to establish mediation and diversion programs as part of the court systems; assist the courts in making the most appropriate placements for Indian children; assist the court in maintaining Indian families; and, reduce the burden of already over worked courts.

For example, in the Western Oklahoma area Three Feathers Associates has established the American Indian Family Court Services Program which provides mediation services in divorce and civil child custody cases, in addition to its contracted services. This demonstration project was funded by the BIA to serve as a court liaison program for individual tribal child welfare programs. This program was initiated in January, 1987 and has already shown potential in the area of mediation and diversion within the tribal and CFR Court systems.

3. PROBLEM STATEMENT

The Act clearly states that Indian tribes and each respective state shall give and provide, "Full Faith and Credit" to public acts, records and judicial proceedings of respective judicial systems. However, we have experienced difficulty with court system not honoring the court orders issued by another court system. For example, a New Mexico tribal court system would not honor or accept a court order issued by an Oklahoma tribal court. Consequently, the Oklahoma tribal court order was ignored by the New Mexico tribal court system. This situation has occurred involving tribal court systems vis-a-vis State District Courts. Thus, the "Full Faith and Credit" provisions are and have not been adhered to consistently within the past 9 years.

RECOMMENDATION: We recommend that a mechanism be developed within the ICWA to resolve the aforementioned legal disputes. The various court systems that are presently involved include: tribal, CFR, and state district courts. This tends to create a multitude of legal issues. We suggest that the ICWA be amended to address this confounding problem and that a legal process be developed to resolve these disputes. This issue is even more critical when state court systems, and tribal/CIO court systems are involved. It has been our experience, that the legal issues take priority over the actual children involved in a particular case, placing the Indian children in "legal limbo". From the social worker perspective, we feel that the legal disputes should have a forum established that would address the

jurisdiction of a case in a more timely manner. This in itself would free the ICW workers to develop permanent placement plans for the children in their case loads.

4. PROBLEM STATEMENT

Through a Memorandum of Agreement, the Bureau of Indian Affairs and Indian Health Service have mandated the establishment of child protection teams within their respective service areas. This administrative mandate is a formal attempt at inter-agency coordination, between BIA and IHS to maximize the existing services available to child abuse and neglect problem. At present, the tribal child welfare programs and tribal and CFR courts participate on a voluntary basis. Various tribes throughout the Nation are finding this administrative mandate an infringement of their sovereign rights. Many believe that the action taken by the BIA and IHS is inappropriate and that the teams do not have legal authority to be involved in the review of cases that come under tribal child protective service systems. Many tribes are considering not participating in the development or operation of child protection teams.

We believe that the child protection team concept is a viable and workable approach for providing coordinated child protective services for Indian children and may serve to enhance and strengthen the Indian child welfare system throughout the Nation. As part of this system, a child tracking system would be developed, there would be a greater likelihood of on-going cases monitoring and, finally, a reporting system could be developed so that the incidence of child abuse and neglect and disposition would more accurately be maintained by the BIA.

RECOMMENDATION: We recommend that the concept of child protection teams be incorporated in Title II of the Act so that teams would be legally sanctioned. We further recommend that tribes assume the leadership role in developing and managing the local child protection teams. Basically, the cases that would be assessed and reviewed would be tribal children. Additionally, tribal law enforcement and tribal social services should be responsible for receiving and investigating reports of child abuse and neglect. A provision should be provided for in the event that a tribe does not operate a child welfare program or has not established a law enforcement program that the local BIA Agency assume the child protective team and investigation responsibilities. We, also, recommend that BIA and IHS employee be required to be members of the teams managed by the tribes.

In terms of the area child protection teams, we feel that the BIA should be responsible for establishing and implementing the area tracking and monitoring systems in cooperation with the Tribes and/or Indian organizations within their respective service areas. This would be an appropriate role for the BIA and IHS. For example, if all service providing agencies within the tribal systems were legally required to participate in the child protection teams, this would make for a more complete and consistent delivery system. Also, this would cause the various programs to be accountable for the services they provide and could assure that follow-up action and case management would be monitored.

5. PROBLEM STATEMENT

Jurisdictional issues concerning child custody proceedings involving a non-Indian parent has become an increasing problem in Indian courts. The termination of parental rights presents a dilemma for the ICW workers and their respective tribal and/or CFR courts.

In Section 1912, subsection (f) Parental rights termination, orders that evidence and a determination of damage to child be provided in this action. Nevertheless, tribal and CFR courts tend to delay this particular court action as long as possible without placing children in imminent harm.

We want it clearly understood that we do not promote or advocate involuntary termination, but that in some instances this action is necessary for the well being and protection of a child. There is an assumed responsibility that we must recognize. All child custody proceedings will not result in reunification of the family. Therefore, we must consider involuntary termination as an alternative. Furthermore, we believe that many ICWPs and tribal and CFR court systems have avoided this type of action and tend to place a child in "long term foster care" or maintain a child in the system under a temporary custody order.

The major concern arises when one of the parents is a non-Indian and this situation causes the tribal and CFR court to move with more caution and in some instances no action is ever taken. The Indian child or children are confined to a tribal or foster care placement, usually and unfortunately, until they reach the age of majority. As a result, we have neglected our responsibility and duty to provide the child with a permanent and stable home environment.

RECOMMENDATION: We recommend that the ICWA be amended to extend tribal and CFR Court jurisdiction over the non-Indian parent of an Indian child. We have experienced situations where the tribal and CFR court systems have ongoing jurisdiction over the Indian child but we cannot assume jurisdiction in regards to the non-Indian parent. This has caused the tribal and CFR courts to become hesitant in pursuing involuntary termination of parental rights. Once again, it appears that a greater weight is given to the parent's rights versus the rights of the child, and in actuality, the rights of the tribe.

6. PROBLEM STATEMENT

Today, tribes are less likely to accept jurisdiction of children who may require intensive care to meet special needs, or children who have not had "significant contact" (ICWA, 1987) with extended family members or the tribal community throughout their young lives. Tribes are becoming rational decision makers in accepting and rejecting jurisdiction of Indian children and are making decisions based upon the "best interest" of the child and the tribe. This rationality, although logical, is problematic. Tribes lack the financial resources, facilities and trained staff to support children with special needs, e.g., severe emotional problems, children with severe handicapping conditions and health problems.

For example, the Blackfeet in Montana is, currently, investigating 638 contracting for child welfare services. The BIA, Blackfeet Agency, is supporting a child in an institution at approximately \$30,000 per year which is approximately one-third of the Snyder Act funds for that agency. If the tribe assumes the responsibility of child welfare services under 638, they also assume this liability for the rest of the child's life. This limits the tribe's ability to provide on-going substitute care services for other needy tribal children and the reunification of children and their families.

Additionally, with tribes using the "significant contact" clause of the Act more and more frequently, unanticipated consequence for the tribe and affected children may be forthcoming. The tribe may lose vital human resources and the affected children may lose their birthrights and cultural heritage, because tribes have limited alternatives to maintain jurisdiction of children living outside of identified Indian land.

Further, sixty-three percent of the Native American population lives outside the jurisdictional boundaries of the recognized tribal governments (Plantz, 1986). Therefore, the likelihood of voluntary and involuntary child custody proceedings falling within the jurisdiction

of the states' is potentially greater. States, typically, have sufficient resources to provide a continuum of services for children in need of care.

As a result of the tribes' more rational decision making, and the states' ability to provide a broader range of services, the public child welfare system will continue to maintain Indian children in substitute care, and place Indian children for adoption at approximately the same rate that exists today. The exact number of Indian children in public substitute care is not known, and the number of adoption decrees reported to the Secretary of the Interior by states is fragmented and inconsistent, (Sambrano, Plantz & Dobrec). The state data compiled by the Bureau of Indian Affairs in 1984 stimulates provocative questions.

Progress is being made in the delivery of child welfare services for Indian children by tribes and states. Nevertheless, the BIA data could indicate that reunification of Indian families is not taking place, that permanency planning is being implemented slowly, if at all, and that the adoption of Indian children is on the increase within the public welfare system. For example, the BIA data demonstrates that:

- <> between the period of August 1982 to August 1983, the number of Indian children receiving public foster care and institutional services increased from 1,230 to 1,592, which represents 362 more children in state care;
- <> between the period from December 17, 1981 through January 31, 1983, adoption decrees for Indian children grew from 62 to 193 for a 105 percent increase; and,
- <> for the period from January 31, 1983 through October 3, 1983 increase 40%.

We do not want to invalidate the improved efforts of states in providing foster care services for Indian children, nevertheless, there is a problem. States with Indian children in care have not been able to demonstrate or maintain successful recruitment programs for Indian foster care homes. This has debilitated the states' ability to follow the order of preference as spelled out in the ICWA or attend to the requirements of the Adoption Assistance and Child Welfare Act of 1980 for the preferential placement with relatives, or the least restrictive environment consistent with the child's needs.

RECOMMENDATIONS: To assist the states in securing and maintaining appropriate foster care placements for Indian children, a stronger, clearer role for off-reservation Indian centers and organizations should be defined so that states must strongly consider using such organizations as recruitment, training and placement agencies. The roles of these agencies should also include the placement and assessment of children under the jurisdiction of tribes but living outside of the tribal services area. In collaboration with tribes, the staff of these agencies could serve as case "intervenors" when formally requested by tribes. Both, state purchase of service funds, and Title II funds, should be made available to support this effort.

Expected Benefits: States would have available foster care homes that would allow them to follow the requirements of both the ICWA and the AA/CWAA in placing Indian children in foster care. Tribes would be provided additional cost effective alternatives for intervening in cases under the jurisdiction of states, and for securing placements of children under their care outside the tribal service areas.

In circumstances where tribes reject transfers of jurisdiction from states because of the degree and extent of social, mental and/or health care needs of a child, the ICWA should stipulate that the affected states and tribes must enter into concurrent or partial jurisdiction arrangements so that both states and tribes can maintain their legal responsibilities and Indian children can receive the best available services.

EXPECTED BENEFITS: There would be a decrease in the number of rejected transfers of jurisdiction by tribes, more Indian children would maintain their link to their tribal heritage and states would be less prone to seek transfer of financial liabilities inherent with serving children with emotional and physical handicapping conditions.

7. PROBLEM STATEMENT

The provision of child welfare services to Indian children and their families is complicated by multiple, overlapping and often unclear assignments of authority and responsibility. The Indian Child Welfare Act requires the interaction of tribal, state and federal governments.

relative to Indian children. Because of the complexities, there are numerous provisions within the ICWA that which have proven to be difficult to implement. Further, the extent that the Act has been implemented can not be determined, primarily, because no mechanism or structure has been activated to monitor or evaluated compliance with the Law. For example,

1. Public child welfare agencies and state courts have found it difficult to understand and accept existing Court of Indian Offenses and tribal courts, as a result, the Indian courts are not extended appropriate protocols, and "Full Faith and Credit" is not extended by the state courts. Further complicating the situation is the fact that not all tribes have established judicial systems.
2. State courts do not consistently address the requirements of the Act to notify tribes when a child of Indian descent becomes known to the public agency or court system. States that do consistently try to meet the requirements of the Act complain that the response of the tribes are slow, if a response is provided at all.
3. Full faith and credit is not consistently provided between state courts and tribal courts, or tribal courts to tribal courts. As a result, Indian children are often held captives by the systems. Actions such as this limit the ability of service providers to work toward permanency.
4. There is no standardized method of tracking an Indian child that enters the substitute care systems of the states, tribes or BIA. As a result, it is highly improbable to determine an accurate accounting of the total number of Indian children in substitute care or to determine the level of services provided by each system in the area of preventative services, permanency planning and re-unification of Indian families.

As a result of the various difficulties which have surfaced within the past 9 years, Indian children carry the burden and are often lost in the systems, lose their link to their tribal heritage and experience multiple placements within the various systems. They are like the proverbial "bouncing ball".

RECOMMENDATIONS: The Secretary of the U.S. Department of Interior be required to submit, on an annual basis, a report that delineates the status of Indian children in: substitute care within the state public welfare system, tribal child welfare system and Bureau of Indian Affairs system; and, the status of Indian children in pre-adoptive placement and the number of adoption decrees granted by courts serving these three systems.

Additionally, this report should include the status of child custody proceeding of tribal and state systems, the extent that "Full Faith and Credit" is extended to the various judicial system affecting Indian children and their families, the efforts states are making in recruiting and maintain Indian foster care homes, a review of all agreements entered into by states and tribes, plus obstacles that hinder states and tribes in negotiating intergovernmental agreements.

Secondly, Congress should direct the Secretary of the Interior and the Secretary of the Department of Health and Human Services to jointly develop and implement a system for annual on-site compliance review of states and tribes providing services to Indian Children. Further, where it is found that non-compliance exists, teeth be provided in the Act to allow for the withholding of all federal assistance received by the non-complying state or tribe.

Thirdly, Congress should direct the Secretary of the Interior to establish a mechanism for resolving disputes between tribal courts that do not provide "Faith and Credit" to each other when Indian children are involved.

8. PROBLEM STATEMENT

The Bureau of Indian affairs has been unable to support innovative research and demonstration programs within Indian Country because of the restrictions within the Act itself. Because the Act does not provide for research and development, most of the demonstration programs and research activities funded have been supported by the U.S. Department of Health and Human Services.

A stronger commitment by the Federal government is needed in this area if in fact, locally designed service systems are to be designed, comprehensive planning is to be undertaken by tribes, improved collaborative relationships between tribes and states are to be secured and locally designed programs are to be developed and supported which would address the social problems affecting the disruption of Indian families.

RECOMMENDATIONS: The Act should be amended to include a Title that provides the Secretary of Interior, in collaborative efforts with the Secretary of Health and Human Services, the responsibility and sufficient funds to establish on-going: research and demonstration programs for Indian child welfare services; programs for the education and training of social workers and counselors; and a National Indian Child Welfare Center.

The National Indian Child Welfare Center would serve as a clearing house of information, provide for resource material development, provide on-going in-service training for child welfare workers, supervisors and administrators, and provide training and technical assistance for child welfare workers within the public welfare systems. The current National Child Welfare Centers supported by the Department of Health and Human Services would serve as a model.

EXPECTED BENEFITS: Efforts in this area would positively build the capacity of on-reservation and off-reservation programs in planning, developing, implementing and evaluating comprehensive child welfare programs. Further, collaborative efforts between states and tribes could possibly increase, and, therefore, Indian children would receive appropriate services.

Thank you, Mr. Chairman and Committee Members, for the opportunity to express our views and concerns as it relates to possible amendments to the Indian Child Welfare Act of 1978. We conclude our testimony with one last request. It would please us very much, if Congress would resolve that the month of November, 1988 be Native American Child and Family month. Thank you.

If the Committee has any further questions, please contact us. Again, thank you for your time and efforts on behalf of Indian children and families throughout the Nation.

INDIAN ASSOCIATION OF ALBERTA AND MIKMAQ GRAND COUNCIL
OF NOVA SCOTIA

BRIEFING PAPER:

U.S. INDIAN CHILD WELFARE ACT AMENDMENTS

1. It is of utmost importance to include aboriginal Canadians in the scope of the Indian Child Welfare Act. Although there is no comparable national legislation in Canada, a number of provinces have enacted similar provisions, and the trend is towards greater devolution of child-welfare responsibilities to aboriginal organizations.

2. The international border physically divides more than a dozen major aboriginal nations, and it is a tragic fact that aboriginal Canadian children are separated from their communities by social welfare agencies in the United States each year. Although there are Blackfoot reserves on both sides of the border, for example, a Blackfoot child from the ^{Blackfoot} ~~Blackfoot~~ Reserve in Alberta, taken into custody while visiting relatives on or near the Blackfoot Reservation in Montana, is not "Indian" under ICWA and therefore need not be returned to either reserve.

3. Because of the depressing economic conditions on most reserves in Canada, a great number of aboriginal Canadians seek temporary, largely seasonal work in the United States each year. Several thousand Mikmaq work each summer in the blueberry and potato fields of Maine, for instance, and there has been a substantial Mikmaq community in Boston, consisting of temporary as well as permanent U.S. residents, for more than two centuries. ~~Many~~ ^{INDIAN} families residing temporarily in the United States suffer from exactly the same stereotypes and biases on the part of social-welfare agencies as U.S. Indians have reported. They have fewer resources to protect themselves, moreover, because they are not only non-"Indians" under U.S. law, but also non-citizens.

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4. While we welcome the initiative taken by the Association on American Indian Affairs in this regard, its proposal to add the words, "tribes, bands, nations or other organized groups that are recognized now or in the future by the Government of Canada or any province or territory thereof," to the definition of "Indian tribe" is incomplete and not compatible with Canadian conditions or administration. In our view it would result in judicial and administrative confusion, inconsistent results, and too little protection.

5. It is essential that any references to Canada added to ICWA (a) be consistent, for the sake of precision and clarity, with Canadian terminology; (b) be realistic and appropriate in terms of the organization and administration of aboriginal communities in Canada; and (c) place aboriginal Canadian and American Indian children on an equal footing as far as possible. Achieving this will require (in our view) a new explanatory section of the Act, rather than simply lumping Canadian children into the existing

provisions without adjustments. Before introducing our proposed text, some background on aboriginal Canadians will be useful.

6. Under section 35 of the Constitution Act, 1982 there are three "aboriginal peoples of Canada": Indians, Inuit, and Metis. Most aboriginal groups refer to themselves as "First Nations."

7. The Indian Act provides for the registration of Indians, and registered ("status") Indians may or may not also be listed as members of particular "bands." Bands exercise various degrees of internal self-government under the Indian Act and agreements with the Minister. In northern Quebec, an alternative form of Indian regional government has been established since 1975 as part of a comprehensive land-claims agreement. Except as provided by a treaty or agreement, provincial child-welfare laws apply on reserves.

8. Inuit are not organised into Indian Act bands, and there are no reserves. The Inuit of northern Quebec have established a regional administration as part of their land-claims agreement with Ottawa, but Inuit self-government elsewhere is conducted by village mayors and councils under both federal and territorial supervision. Inuit legal status is in a dynamic state pending the settlement of land claims to two-thirds of the Arctic, and one proposal under serious consideration is the organisation of a new, predominantly-Inuit province.

9. Metis, properly speaking, are Prairie groups, ^{MIXED} ~~whose~~ ^{OF FRENCH AND INDIAN} ~~ancestry~~ ^{ANCESTRY} terminated by Parliament following First Nations' rebellion a century ago. Many still live in distinct rural communities, particularly in Manitoba. In addition, there are thousands of "non-status Indians" throughout Canada whose ancestors were "enfranchised" involuntarily because of marriage to non-Indians men, or under a programme which resembled the United States' "forced fee" policy of the 1910s. Canada recognises national-level Metis and non-status political organisations only.

10. While "bands" are the basic unit of Indian Act administration they are an artificial construct based on residence on a reserve, rather than cultural unity. Some bands are multitribal, but in a majority of cases the ethnohistorical tribe or nation is divided into several bands. Although bands have called themselves "First Nations," they are not "nations" in the same sense as the ~~First~~ ^{NAVAJO} or Haida. In many instances, including Mikmaq and Blackfeet, the traditional national political organization persists, but is not recognised by Canada.

11. The situation is further complicated by "Provincial/^{TERRITORIAL} Organisations" (PTOs). Originally authorised in 1972 to pursue land claims, PTOs also receive federal funding for a variety of human-services programmes. Other regional aboriginal human-services organisations have also emerged recently, outside the band or PTO structure.

12. The superimposition of bands, PTOs, other government-funded aboriginal organisations, and traditional national councils makes the jurisdictional situation somewhat more complex and uncertain in Canada than in the United States, where authority is more or less clearly lodged in tribal councils recognised and listed by the Secretary of the Interior. Indeed, the Canadian situation is somewhat comparable to Alaska, where there is an unresolved distribution of responsibilities among municipal, tribal, regional aboriginal, state and federal agencies.

13. In Atlantic Canada, for instance, Mikmaq people are found in five provinces. In Nova Scotia alone there are more than thirty Mikmaq reserves, some presently uninhabited. All Nova Scotia Mi'kmaq originally were registered as a single band, but in 1960 the Minister divided them into twelve bands, and apportioned the reserves among them. A PTO for Nova Scotia Mi'kmaq was formed in 1972, but Mi'kmaq in New Brunswick and Quebec fall within other PTOs, and a second Nova Scotia PTO was formed in 1987. There is a Native Council of Nova Scotia for non-status Mi'kmaq, as well as several wholly independent regional Mi'kmaq service agencies such as the Mikmaq Arts and Cultural Society. The traditional national government, the Grand Council, continues to function, especially in relation to treaties and claims, and maintains a consular office in Boston.

14. The point of all this is to emphasize the necessity of taking Canadian organisational differences into account, insofar as they affect the locus of responsibility for child welfare. American caseworkers and judges need more precise guidance. Who should be notified, for example, when a Mikmaq child is taken into custody in Boston? The child's band--if it has one? A PTO? The Native Council? The Grand Council? Most have federally-recognised and funded responsibilities for community services; only the Grand Council has an office in the United States. A provision allowing aboriginal groups to designate agents for notice and intervention would be the most practical way to solve this problem.

15. The importance of a designated-agent provision is especially clear in trying to apply the placement-priority rules in section 105 of ICWA. A ~~Mikmaq~~ ^{NAVAJO} child may belong to a band, and may also be connected with one or more PTOs and other recognised regional ~~organisations~~ ^{ORGANISATIONS}. Which one is the child's "tribe"? If the court cannot identify a suitable foster home within the child's own band (or reserve), can it place the child in any "Indian" home, rather than a ~~Native~~ ^{NAVAJO} home? That would be the result of treating "tribe" and "band" as equivalent.

16. Notwithstanding the relative complexity of the organisational system in Canada, we see no reason why the transfer provisions of section 101(a) should not apply, as long as there is a provision for designating agents as well. In a case where the child is not only Indian, but from another country, repatriation is especially desirable since the child's potential loss of status and identity is even greater. Although few aboriginal Canadian communities