

May 20, 2011

Ms. Jan Rothstein  
Division of Policy, Children's Bureau  
Administration on Children, Youth and Families  
Administration for Children and Families  
1250 Maryland Avenue, SW., 8th Floor  
Washington, DC 20024

Re: Federal Monitoring of Child and Family Service Programs; Request for  
Public Comment and Consultation Meetings – April 5, 2011- Federal  
Register Notice

Dear Ms. Rothstein:

The Association on American Indian Affairs (AAIA) is an 89 year old Indian advocacy organization governed by an all-Native American Board of Directors from across the country. AAIA's studies and advocacy were a catalyst for the Indian Child Welfare Act of 1978 (ICWA) and more recently AAIA was integrally involved in developing tribal provisions in the Safe and Stable Families and Fostering Connections to Success Acts. AAIA has worked to implement ICWA and the Fostering Connections legislation through a variety of mechanisms, including the development of tribal-state agreements, training and litigation. AAIA works closely with Indian tribes and other national organizations on these issues, including the National Indian Child Welfare Association, National Congress of American Indians, American Public Human Services Association, and Casey Family Programs, among others.

The National Indian Child Welfare Association is a national Indian organization with an all Indian Board of Directors located in Portland, Oregon. NICWA has over 24 years of experience in providing technical assistance and training to tribes, states and federal agencies on issues that impact American Indian and Alaskan Native children and families. NICWA also provides leadership in public policy development and research that supports and informs improved services for this population. NICWA works closely with tribal leadership across the country through its relationships with the National Congress of American Indians and other regional tribal organizations.

Our joint comments will address issues that impact services and outcomes for American Indian and Alaskan Native children and families. This includes data collection, tribal/state/federal relationships, compliance with federal law, and participation of tribal representatives in federal reviews and policy development. We would like to note that our comments have attempted to incorporate feedback that we have received from tribal program officials and elected leadership.

## Comments

### **1. How could ACF best promote and measure continuous quality improvement in child welfare outcomes and the effective functioning of systems that promote positive outcomes for children and families?**

At the heart of this question is the strength of the tribal/federal relationship and the promotion of improved tribal/state relationships. Effective consultation is the lynchpin for a robust and strong relationship between tribes and ACF. From a tribal standpoint, consultation means a process built upon the exchange of ideas and an effort to reach agreement on approaches to implement federal law that are sensitive to the unique needs of tribal communities and cultures. While there are some promising practices being used in certain regional offices that have greatly improved communication and relationships with tribes, it is important to re-double efforts to ensure that consultation is a two-way dialogue and that consultations about important issues and policies take place with adequate advance notice to tribal officials and are not subsumed within larger training and informational events.

In this regard, it is important that the system account for differences in how tribal governments view and work to achieve critical child welfare outcomes, such as permanency. Most federal program definitions, approaches and incentives have primarily been built upon concepts that did not incorporate tribal values or practice. ACF staff are certainly expert in understanding the requirements of the programs they administer, but need to be sure to think creatively about how these program requirements and larger outcomes can be adapted in a tribal context and to do so in collaboration with tribes whenever possible.

The other critical relationship is between the states and tribes since a large number of Native American children are in the care of state systems. In its submission, one of APHSA's recommendations is that the states need to "define specific measures to evaluate how Indian children are being treated by the child welfare system in terms of their unique needs and legal requirements (and how this can be improved) and ensure that these measures and resultant improvement plans are developed in collaboration with tribes and appropriate Indian organizations." We believe that this is a vitally important part of any quality improvement system at the state level. We urge ACF to use its resources to encourage this type of relationship and to monitor whether meaningful tribal-state collaboration is in fact taking place. We would note that this kind of collaboration can have larger positive impacts on the entire system, for example, by increasing access of Native American children to tribal services and tribally-licensed foster homes.

### **2. To what extent should data or measures from national child welfare databases (*e.g.*, the Adoption and Foster Care Analysis and Reporting System, the National Child Abuse and Neglect Data System) be used in a Federal monitoring process and what measures are important for State/Tribal/local accountability?**

Data on tribal children and families that is entered into these national databases comes primarily from state agencies who are serving this population, both on and off tribal lands. The data does provide some important information to help understand trends nationally and in states

with regards to some child welfare outcomes. However, there are issues with the reliability of the data. First, there is likely some underreporting of who is American Indian/Alaskan Native (AI/AN). While the Indian Child Welfare Act requires states to identify AI/AN children in order to comply with the law's legal requirements, many front line state workers are unfamiliar with the law's requirements and have inadequate skills to effectively interview and inquire about AI/AN heritage. In addition, several western states where tribal populations are typically higher have significant percentages of children in the child welfare system whose racial status is classified as unknown. In some cases, the highest percentages are in areas of the state where tribal populations are concentrated near tribal lands.

We also know that identification of a child or family as AI/AN is self-reported data that does not always link to membership in a tribe, which is a determinate of whether a child is considered AI/AN for purposes of applying other federal protections, such as those under the Indian Child Welfare Act. Moreover, these federal databases do not clearly identify where tribal children live (on or off tribal lands), which is important to understanding which jurisdictions and service delivery systems may be involved in providing services and what their role is. The overall reliability of the data provides a challenge to developing a deeper understanding of the data and developing appropriate responses.

One other issue that impacts the usefulness of the data is the lack of connection to federally mandated protections under the Indian Child Welfare Act. This federal law identifies several legal requirements that shape Congress's thinking about what are good outcomes for AI/AN children, such as whether active efforts have been provided to the parents or custodian or whether children were placed in appropriate placements as defined by the law. The Indian Child Welfare Act requirements do not stand alone in determining good outcomes for AI/AN children, but neither do those under the federal databases mentioned here. Without integrating the two sets of requirements, the outcomes picture for AI/AN children is incomplete at best. ACF requires states to provide limited data on a few Indian Child Welfare Act requirements, but there is more data that should be routinely collected. We would note that some states, for example the State of Washington, have developed more robust data systems relating to Indian children. We would recommend that ACF look at these systems and incorporate additional key elements necessary for measuring the well-being of Indian children into the national data system. We would note that a 2005 General Accountability Office study recommended that the ACF use such data to help states implement the ICWA.

### **3. What role should the child welfare case management information system or systems that States/Tribes/local agencies use for case management or quality assurance purposes play in a Federal monitoring process?**

Where states collect more detailed and ongoing longitudinal data about child well-being and collect additional information relating to Native American children, utilizing these systems can greatly help to inform the Federal monitoring process.

In terms of tribes, because of a lack of resources and limited access to funding supporting the development of more sophisticated data systems, tribes often operate rather modest case management systems, most of which are paper and pencil based. In order to answer this

question, it would be advisable to consult with tribal leadership and program officials to explore what their capacity currently is, what tribal needs and priorities are, and how tribal governments would see the use of their systems and data in a federal monitoring process.

**4. What roles should State/Tribal/local child welfare agencies play in establishing targets for improvement and monitoring performance towards those targets? What role should other stakeholders, such as courts, clients and other child-serving agencies play?**

We would like to focus our response to this question on the tribal role in state systems. In 1994, Title IV-B was amended to require states to submit a description in their state plans of how they were going to implement the ICWA in their states. This description must be developed in consultation with tribes. However, a study funded by Casey Family Programs conducted several years after enactment of this requirement found that plans were being approved in some cases without the state even addressing the requirement or where the information was too vague to understand the efforts being made.

Likewise, although some tribes have participated in the state CFSR process – something that the National Indian Child Welfare Association has been regularly encouraging – recently two different regional tribal organizations with over 60 members have indicated to us that it was not a good use of their time because there was little focus on the outcomes or issues that mattered to them. They also indicated that they did not feel their input was valued and they were most often not invited to participate until most of the process had already been decided.

We are encouraged by the APHSA's recommendations which emphasize not just consultation, but collaboration with tribes on quality reviews and service delivery, including access to tribal services, use of tribally-licensed foster homes, joint tribal-state review of compliance with ICWA and collaborative decision-making about improvements that need to be made in terms of how state systems treat AI/AN children. It is vitally important that ACF support these recommendations and that it emphasizes the importance of a tribal/state partnership around these issues in its reviews and as part of its support activities. If tribal governments have the perception that their role has more value and their needs and priorities are more carefully considered, we believe that they will participate more which will lead to better outcomes for AN/AI children.

**5. In what ways should targets and performance goals be informed by and integrated with other Federal child welfare oversight efforts?**

As mentioned earlier, the best interests of Indian children and families are best met by ensuring that they receive the benefits of the multiple federal child welfare laws that apply to them, including Title IV-B, Title IV-E and ICWA. Ensuring that all of these requirements are included as part of federal child welfare oversight efforts is vitally important. It might also be beneficial for ACF to develop a cooperative agreement with the Bureau of Indian Affairs in regard to monitoring of these issues that is developed with the participation of tribes. This is another area where consultation with tribes to determine their priorities in regard to integration of federal efforts would be helpful.

**6. What specific strategies, supports, incentives, or penalties are needed to ensure continued quality improvement and achievement of positive outcomes for children and families that are in substantial conformity with Federal child welfare laws?**

As mentioned previously, one of the most important elements of supporting positive outcomes for AI/AN children is the degree to which federal efforts can support tribal and state collaborations. Tribal children, more than any other children, are served by an array of jurisdictions and service providers, sometimes operating simultaneously – federal, state and tribal.

We believe that the federal government should more actively assist tribes and states to develop tribally initiated collaborations that can address some of the issues that we have mentioned above and promote tribal capacity building so that fewer AI/AN children have to be in state custody. We would also support financial incentives for states that develop promising practices as measured by tribal feedback and by data that shows specific improvements in outcomes for AI/AN children, and for tribes that meet negotiated outcomes that match federal and tribal priorities.

We would also support more targeted TA for states on ICWA implementation and other important requirements, such as the Title IV-B requirement that the state diligently recruit an adequate number of foster and adoptive homes that reflects the diverse pool of children presently in their child welfare system. No state has enough AI/AN foster care or adoptive homes and in some areas the number has not significantly increased in over a decade. This directly impacts the ability of tribal children to be placed in appropriate homes that are required by federal law under the ICWA.

**7. In light of the ability of Tribes to directly operate title IV–E programs through recent changes in the statute, in what ways, if any, should a Federal review process focus on services delivered to Indian children?**

There are two distinct issues that this question addresses. First, how should the federal review process address services to Indian children by state systems. We believe that there are several mechanisms that ought to be incorporated into the federal review process of the states:

1. Additional data elements should be required along the lines of what is collected by the State of Washington and other states
2. ACF should review and emphasize the importance of the quality of tribal-state collaborations around such issues as access to tribal services, use of tribally-licensed foster homes, joint tribal-state review of compliance with Title IV-B, Title IV-E and ICWA, and the extent of collaborative decision-making on individual cases
3. An adequate number of Indian cases need to be reviewed as part of the CFSR (or any new and improved) process. We are aware that some are proposing a continuous quality improvement model as an alternative to the CFSR itself. This has some promise so long as Indian tribes are fully involved in these processes (both review and involvement in shaping program improvement initiatives) and that compliance with ICWA is part of what is being reviewed.



We have discussed some of these issues in more detail in our response to some of the other questions.

In terms of tribes directly operating Title IV-E, we believe that the federal review process needs to be tailored to the realities of the tribes and not simply the state process imposed on the tribes. Such a process needs to be developed through the type of tribal consultation that we described in our answer to question 1.

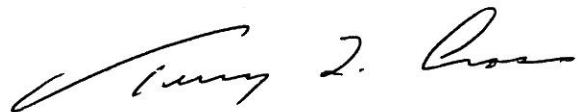
**8. Are there examples of other review protocols, either in child welfare or related fields, in which Tribal/State/local governments participate that might inform CB's approach to reviewing child welfare systems?**

As mentioned, we would suggest that you look at state systems that have developed more robust review systems in collaboration with tribes in regard to the treatment of Native American children by state systems. Once again, it is critical that such protocols be consistent with tribal needs as identified by them and be supported by tribes.

Thank you for your consideration of these comments.



Jack F. Trope, Executive Director



Terry L. Cross, Executive Director



**AAIA**  
**ASSOCIATION ON**  
**AMERICAN INDIAN AFFAIRS**

966 Hungerford Drive  
Suite 12-B  
Rockville, MD 20850  
240-314-7155



**NICWA**  
National Indian Child Welfare Association  
*Protecting our children • Preserving our culture*

5100 Macadam  
Suite 300  
Portland, OR 97201  
503-222-4044