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ABSTRACT

The Select Committee on Indian Affairs met on June 30, 1980, for an oversight hearing on the Indian Child Welfare Act of 1978 to correct flaws and straighten out problems concerning Public Law 95-608 and the way it is implemented. Various members of the administration and a group of Indian leaders from across the country attended the hearing, at which Senator John Melcher presided. Indian witnesses testified and made recommendations on the following concerns: the administration and funding of the Title II Indian child and family services program; ambiguities in the amount and distribution of funding; mechanism or regard for tribal priority and authority in child welfare; questions on service population; problems with communication; compacts between states; problem identification; Bureau of Indian Affairs involvement; discussion of a boarding school study; and access to funds by off-reservation Native American organizations. The follow-up letters presented issues of concern from the Inter-Tribal Childrens' Program and the Sisseton-Wahpeton-Sioux Tribe. (JD)

OVERSIGHT OF THE INDIAN CHILD WELFARE ACT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

OVERSIGHT OF THE INDIAN CHILD WELFARE ACT
(PUBLIC LAW 95-608)

JUNE 30, 1980
WASHINGTON, D.C.

U.S. GOVERNMENT PRINTING OFFICE
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(II)

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WITNESSES

OVERSIGHT OF THE INDIAN CHILD WELFARE ACT

MONDAY, JUNE 30, 1980

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 5110, Dirksen Senate Office Building, Senator John Melcher (chairman of the committee) presiding.

Present: Senator Melcher.

Staff present: Max Richtman, staff director; Peter Taylor, special counsel; Virginia Boylan, staff attorney; Susan Long, professional staff member; and John Mulkey, legislative assistant to Senator DeConcini.

Senator MELCHER. The committee will come to order.

We are having an oversight hearing today on the Indian Child Welfare Act of 1978, Public Law 95-608. The act is fairly new, and at this time we are trying to make sure that it is getting off to a good start. We think it is appropriate—to have an oversight hearing now—to correct any flaws that might be developing and to straighten out some obvious or apparent rough spots in the act itself and how it is implemented.

Today we are going to hear from the administration and the group of Indian leaders across the country who are trying to work with the act. Hopefully, after the completion of this oversight hearing, we will be able to develop a joint assessment of the Indian community and the administrators within the Bureau of Indian Affairs in the Division of Social Services that better reflects the purpose and intent of Congress in the 1978 act.

With the advice and comments of the tribal leaders throughout the Nation who are trying to work with it, we think Congress should be in a better position to advise the administration. I am sure the administration will want to have some input and some advice, both from the Indian nation and from Congress.

Without objection, the act, the staff memorandum, and the excerpt from the Federal Register will be included in the record at this point.

[The material follows. Testimony begins on p. 34.]

Public Law 95-608
95th Congress

An Act

To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes.

Nov. 8, 1978
[S. 1214]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Child Welfare Act of 1978".

Indian Child Welfare Act of 1978.
25 USC 1901 note.

SEC. 2. Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

25 USC 1901.

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

Congress, responsibility for protection of Indians.

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and 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;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

25 USC 1902.

SEC. 3. The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

Definitions.
25 USC 1903.

SEC. 4. For the purposes of this Act, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688, 689); 43 USC 1606.

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended; 43 USC 1602.

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and
(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

TITLE I—CHILD CUSTODY PROCEEDINGS

Indian tribes, exclusive jurisdiction over Indian child custody proceedings. 25 USC 1911.

SEC. 101. (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) The United States, every State, every territory or possession of the United States, and every Indian tribe shall 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.

Foster care placement, court proceedings. 25 USC 1912.

SEC. 102. (a) In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court

shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(c) Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Parental rights, voluntary termination. 25 USC 1913.

SEC. 103. (a) Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

25 USC 1914.

SEC. 104. Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of com-

potent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, and 103 of this Act.

Adoptive placement of Indian children. 25 USC 1915.

SEC. 105. (a) In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Any child accepted 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 also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

Petition, return of custody. 25 USC 1916.

SEC. 106. (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 102 of this Act, that such return of custody is not in the best interests of the child.

Removal from foster care home.

(b) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this Act, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

25 USC 1917.

SEC. 107. Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement,

the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

Reassumption, jurisdiction over child custody proceedings. 25 USC 1918. 18 USC prec. 1151 note. 25 USC 1321. 28 USC 1360 note.

SEC. 108. (a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) (1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 101(a) of this Act are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 101(b) of this Act, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 101(a) over limited community or geographic areas without regard for the reservation status of the area affected.

(c) If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a), the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act.

States and Indian tribes, agreements. 25 USC 1919.

SEC. 109. (a) 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.

(b) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such

revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

Improper removal of child from custody. 25 USC 1920.

SEC. 110. Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

25 USC 1921.

SEC. 111. In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this title, the State or Federal court shall apply the State or Federal standard.

Emergency removal of child. 25 USC 1922.

SEC. 112. Nothing in this title shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

Effective date. 25 USC 1923.

SEC. 113. None of the provisions of this title, except sections 101(a), 108, and 109, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

TITLE II—INDIAN CHILD AND FAMILY PROGRAMS

25 USC 1931.

SEC. 201. (a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

42 USC 620. 1397.

Additional services. 25 USC 1932.

SEC. 202. The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

Funds. 25 USC 1933.

SEC. 203. (a) In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare, and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare: *Provided*, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended. 25 USC 13.

SEC. 204. For the purposes of sections 202 and 203 of this title, the term "Indian" shall include persons defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (90 Stat. 1400, 1401). 25 USC 1934. 25 USC 1603.

TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

SEC. 301. (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show— Final decree, information to be included. 25 USC 1951.

(1) the name and tribal affiliation of the child;
(2) the names and addresses of the biological parents;
(3) the names and addresses of the adoptive parents; and
(4) the identity of any agency having files or information relating to such adoptive placement.

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit from the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child's tribe, where the information warrants, that the child's parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

SEC. 302. Within one hundred and eighty days after the enactment of this Act, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act. Effective date. Rules and regulations. 25 USC 1952.

TITLE IV—MISCELLANEOUS

Day schools.
25 USC 1961.

SEC. 401. (a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

Report to congressional committees.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education, and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from the date of this Act. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

Copies to each State.
25 USC 1962.

SEC. 402. Within sixty days after enactment of this Act, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this Act, together with committee reports and an explanation of the provisions of this Act.

25 USC 1963.

SEC. 403. If any provision of this Act or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

Approved November 8, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1386, accompanying H.R. 12533 (Comm. on Interior and Insular Affairs).
SENATE REPORT No. 95-597 (Comm. on Indian Affairs).
CONGRESSIONAL RECORD:
Vol. 123 (1978): Nov. 4, considered and passed Senate.
Vol. 124 (1978): Oct. 14, H.R. 12533 considered and passed House; passage vacated, and S. 1214, amended, passed in lieu.
Oct. 15, Senate concurred in House amendments.

United States Senate
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, D.C. 20510

June 28, 1980

MEMORANDUM

To: John Melcher, Chairman

From: Peter Taylor, Spec. Counsel

Subj: Overaight hearings on Indian Child Welfare Act

The Indian Child Welfare Act was enacted into law November 8, 1978. The jurisdictional provisions of the Act took effect in May of 1979 and have now been in effect a little more than one year. For the most part it appears the Act has been well received by both tribal and state authorities although some bugs have been encountered and a few challenges to the Constitutionality of the Act have been made -- unsuccessfully to date.

The primary problem areas are in the funding of tribal family support and child welfare programs. There are two basic problems: (1) Adequacy of the funds appropriated in FY '80 and sought in FY '81, and (2) the manner in which the B.I.A. distributed the FY '80 funds among the tri:

B.I.A. disbursement of FY '80 funds.

In FY '80 Congress earmarked $5.5 million for implementation of the new Indian Child Welfare Act (ICWA). These funds were distributed to tribes, urban Indian organizations, and off-reservation groups in the form of grants. The principal problem is that in determining the amount of funds to be awarded grant applicants, the Bureau used a "formula" based on a $15,000 base per applicant plus a per capita add-on based on a ratio of the

number of people to be served calculated against the number of people to be served nationwide. An initial screening process was employed which culled out 90 applications as unsuitable for funding. Out of 247 applications filed, 157 were approved. However, after this initial screening process no effort was made to distinguish between the nature or quality of the grant proposals. The formula was simply applied and awards made on that basis. The result was that many tribes or groups with ongoing child welfare programs or who submitted comprehensive child welfare programs received no more than those tribes or groups who sought only a planning grant, i.e., approximately $15,000. Thus the Yakima tribe, the Crow tribe, and the Ft. Belknap Indian Community received only the minimum $15,000 grant. The Navajo tribe received only $45,000.

A second problem with the formula funding is that the $15,000 base does not consider the client population to be served. Thus, at Sault St. Marie, Michigan, three grant applications were received in apparent competition with each other, yet each got the minimum $15,000. Consortium of tribes and villages from California and Alaska received disproportionately high funding because they were comprised of numerous very small communities. Each tribe or village in the consortium was appar ntly counted in at $15,000 each. States or areas with larger tribes such as Billings, Montana; Aberdeen, South Dakota; and Phoenix, Arizona received commensurately less.

The formula funding approach was designed to eliminate complaints of favoritism. While this may be a problem, it is clear that the formula funding approach is unworkable and should either be junked entirely or radically redesigned for use in FY '81.

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FY '81 budget proposal.

The B.I.A. FY '81 budget estimate for General Assistance, the program category from which funds for child welfare programs are drawn, is questionable on two grounds: (1) it appears to under state the service population or "case load", and (2) it appears to under state or distort the "unit cost" per child per month.

It must be remembered that the Indian Child Welfare Act was enacted in November of 1978 when the FY '79 budget was already in place. The ICWA expanded the traditional program functions which could be undertaken with appropriated funds and it also expanded the B.I.A. service population from children and families "on or near" Indian reservations to urban and off-reservation organizations and Indian tribes and groups such as terminated tribes included within the coverage of the Indian Health Care Improvement Act.

Despite this fact, the B.I.A. budget from FY '79 to FY '81 shows (1) no expansion of population to be served, and (2) a decrease of unit costs per child served. The following figures are taken from the B.I.A. budget presentation for FY '80 and FY '81:

Funding levels:	FY 1979	FY 1980	FY 1981
Welfare Grants ($ in thousands)			
General Assistance	$51,101.0	51,101.0	53,356.0
Child Welfare	13,590.0	13,590.0	11,190.0
On-Going Child Welfare	3,800.0	3,800.0	---
Child Welfare Grants	---	2,500.0	9,300.0?
	$68,491.0	70,991.0	73,846.0

The increase in the child welfare grant is made up by the transfer of the "on-going child welfare" line item of $3,800.0. Both the 1980 budget and the 1981 budget are premised on a "case load" constant with that of the FY '79 budget. This despite enactment of the ICWA.

Case load:	FY '79	FY '80	FY '81
CW Children per month	3,300	3,300	3,300
Unit costs:			
CW $ per child per month	343.18	343.18	282.57

These figures seem inexplicable. The case load remains constant with the case load figure before enactment of the ICWA. The unit cost actually decreases by $60.61 for 1981. A partial explanation for this abberation lies in the fact that part of the costs of education of handicapped children ($2.4 million) was shifted to the Education budget. However, in both the FY '80 and FY '81 budgets the Bureau justifies increases in the General Assistance funds on the grounds that increases in state standards will result in higher costs.

The FY '81 budget proposal states: "The child welfare caseload has remained relatively constant for the past few years, and there is no projected caseload increase for FY '81." In the face of 157 grant applications, many of which were directed to $15,000 planning grants, this statement of the B.I.A. simply cannot be true.

Projection for FY '81:

Tribes and Indian organizations can derive funds for operation of child welfare programs through two sources: (1) child welfare grants under the ICWA, and (2) contracts with the B.I.A. under P.L. 93-638. Unless the funding level for the grants program is increased substantially and/or the formula allocation abandoned, the primary delivery vehicle for FY '81 will continue to be PL 638 contracts at roughly the same level as presently exists. Alaska and California will be the primary beneficiaries of the ICWA.

federal register

Tuesday
July 31, 1979

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Child Welfare Provisions

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 13

Tribal Reassumption of Jurisdiction Over Child Custody Proceedings

July 24, 1979.

AGENCY: Bureau of Indian Affairs.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is adding a new part to its regulations to establish procedures by which an Indian tribe may reassume jurisdiction over Indian child custody proceedings as authorized by the Indian Child Welfare Act, Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C. 1918.

DATE: This rule becomes effective August 30, 1979.

FOR FURTHER INFORMATION CONTACT: David Etheridge, Office of the Solicitor, Division of Indian Affairs, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240; (202) 343-6967.

SUPPLEMENTARY INFORMATION: The authority for issuing these regulations is contained in 25 U.S.C. 1952 and 209 DM 8. This new part was published as proposed rules on April 13, 1979, 44 FR 23092. The comment period on the proposed rules closed on May 25, 1979. Comments were reviewed and considered and changes were made where appropriate.

A. Changes made due to comments received

(1) Section 13.1 has been modified in response to comments urging additional clarification to assure that tribes may reassume jurisdiction without relinquishing their legal arguments that they already had such jurisdiction. One federal district court has ruled that Public Law 83-280 did not deprive tribes of jurisdiction, but merely conferred concurrent jurisdiction on the state. *Confederated Tribes of the Colville Reservation vs. Beck*, C-78-78 (E. D. Wash. December 13, 1978). Additionally, disputes continue to exist over whether particular statutes authorizing the sale of certain tribal lands had the effect of transferring to the state jurisdiction over those lands that are sold. *See e.g., United States vs. Juvenile*, 453 F. Supp. 1171 (D. S. D. 1978).

(2) Section 13.1 has also been modified to reflect the variety of jurisdictional arrangements authorized by the Indian Child Welfare Act. Where both the tribe and the state currently assert or exercise jurisdiction over the same Indian child custody disputes, the tribe may obtain exclusive jurisdiction. If a state is asserting exclusive jurisdiction, the tribe may take over all jurisdiction or simply obtain jurisdiction concurrent with the state. Additionally, a tribe may reassume partial jurisdiction limited to only certain types of cases. For example, it could take jurisdiction over only a portion of its former reservation area or only over cases referred to it by state courts as authorized under 25 U.S.C. 1918(2).

(3) In response to a comment, specific reference is made to Oklahoma to reflect the intent of Congress, which is clearly stated in the legislative history, that the right to reassume jurisdiction be available to Oklahoma tribes.

(4) A comment that a specific provision be included to authorize groups of tribes to join together so they can pool resources to develop a feasible plan for reassumption of jurisdiction has been adopted as subsection (c). The Act places no restrictions on how tribes organize to assume jurisdiction so long as the final result is a feasible plan. The consortium approach has already been successfully used by tribes in the Northwest and in Nevada. Under such an approach a single court may be designated by several tribes as their tribal court.

(5) In response to a comment, provision has been made for land or communities that acquire reservation status after reassumption of jurisdiction. New subsection (e) states that such land or communities automatically become subject to tribal jurisdiction unless the petition for reassumption specifically states that it does not apply to lands or communities that subsequently acquire reservation status.

(6) Section 13.11 has been modified to delete requirements for information concerning the reservation when a tribe wishes to assume only referral jurisdiction under 25 U.S.C. 1911(b). Such information is not needed for referral jurisdiction since that jurisdiction is not dependent on residence or domicile on a reservation.

(7) A comment that the phrase "clear and definite" be substituted for the word "legal" in referring to the description of the reservation has been adopted. Commenters objected that some tribes may have difficulty meeting the requirements of preparing a "legal description" of the boundaries. The purpose of this requirement is simply to inform the public and government officials what territory is subject to tribal jurisdiction so that uncertainty over this issue will not delay the resolution of child custody matters by the proper court. A "clear and definite" description of the boundaries will suffice for that purpose.

(8) Several commenters objected to the use of the term "judicial system" because it could be construed to be not as broad as the definition of "tribal court" in 25 U.S.C. 1903(12), which includes any "administrative body of a tribe which is vested with authority over child custody proceedings." The use of the term "adjudicate" was considered objectionable for the same reason. The final rules have been revised in light of these comments by referring to a "tribal court as defined in 25 U.S.C. 1903(12)" rather than a "judicial system" and replacing the phrase "adjudicate child custody disputes" with "exercise jurisdiction over Indian child custody matters."

(9) Some commenters said they thought the phrase "persons with a legitimate interest in a child custody proceeding," which was used to describe those persons who would be able to ascertain from the tribe whether a particular child is a member or eligible for membership, is too vague. Accordingly, that phrase has been changed to "a participant in an Indian child custody proceeding."

(10) One commenter pointed out that some tribes operate without any constitution or other form of governing document. Accordingly, the words "if any" have been added after the phrase "constitution or other governing document."

(11) Comments were also made regarding the requirement that the plan provide information concerning court funding. These objections were based on concern that an impasse might develop in which funding would be contingent on reassumption of jurisdiction and reassumption of jurisdiction contingent on funding. If funds will become available when the tribe reassumes jurisdiction, those funds may be listed in the plan. This provision has been modified to make it clear that such funds may be included. This requirement has been retained because availability of funding to implement the reassumption plan is an essential element of feasibility.

(12) Some commenters also objected to the requirement that the plan state how many tribal members there are and how many Indians live on the affected territory. In part, these objections arise due to difficulty some tribes may have in arriving at precise figures. Accordingly, these provisions have been modified to permit estimates where necessary.

(13) One commenter pointed out that the number residing on a tribe's

reservation is irrelevant if the tribe is petitioning only for referral jurisdiction. Therefore, the requirement for that information, for referral jurisdiction only, has been deleted. The requirement that information be provided concerning the number of persons that will become subject to the tribe's jurisdiction and the number of child custody cases expected, has been retained because it is needed to evaluate whether the plan is adequate. Population is one of the specific factors listed by Congress as appropriate for consideration in making a feasibility determination. See 25 U.S.C. 1918(b)(iii).

(14) Many commenters objected to the requirement for a description of support services that will be available to the [illegible] when jurisdiction is [illegible]. Some feared that the Bureau would only consider those resources [illegible] employed by traditional social service agencies and would not consider special non-institutional resources available [illegible] to the tribe. This [illegible] to make it [illegible] narrow construction of [illegible] is not intended. [illegible] effectively preclude [illegible] from reassuming [illegible] support [illegible] who [illegible] has [illegible] continue to have the [illegible] towards Indians residing within their borders as they have to other citizens under the Fourteenth Amendment to the United States Constitution. Some state services, however, may become less available after reassumption of jurisdiction simply because tribal courts lack the jurisdiction that many state courts have to compel state agencies to provide support services. If reassumption of jurisdiction creates a problem in this regard, the tribal plan should state how the tribe plans to deal with it.

(15) A number of comments were received concerning the requirement in § 13.12 that the affected territory must have been previously subject to tribal jurisdiction. Commenters pointed out that such a requirement would exclude lands and communities that acquired reservation status after passage of legislation giving the state jurisdiction. This subsection has been revised to require only that the land be a reservation as defined in the Act and that it be presently occupied by the tribe.

(16) Paragraph (a)(4) has been modified by using the term "tribal court, as defined in 25 U.S.C. 1903(12)," to assure that tribes have as much freedom as possible in establishing procedures.

(17) One commenter objected to paragraph (a)(5) requiring a tribe to have available support [illegible] who must be [illegible] as it imposes a heavy burden on tribes since just one severely handicapped child may require extraordinary assistance, the availability of which the tribe may not be able to establish in advance. This provision has been modified to require only that support services be available for *most children*. Tribes, like states, can make special arrangements when especially difficult cases arise. There will be no requirement for an advance showing that facilities are available for the most severe problems. Also, in response to comments, paragraph (a)(5) has been revised to require only that services be in place by the time of reassumption. They need not be in place before that time.

(18) Paragraph [illegible] has been modified to require only that a procedure be established for identifying persons who will be subject to the tribe's jurisdiction, rather than for identifying all tribal members. The Act contemplates [illegible] reassumed [illegible] a portion of the total [illegible] the tribe. Where the [illegible] needed only [illegible] or persons eligible [illegible] who will become subject to tribal jurisdiction.

(19) Upon the recommendation of one commenter, a new subsection (b) has been added specifically providing for assistance by the Department to a tribe that may wish to reassume partial jurisdiction if it is unable to develop a feasible plan for total reassumption of jurisdiction. The subsection also provides for Departmental assistance in negotiating agreements with the state under 25 U.S.C. 1919.

(20) In response to comments on § 13.14(b) copies of the notice of reassumption of jurisdiction will be sent to the governor and the highest court in the state as well as the attorney general of the affected state or states to improve the likelihood that all affected state agencies are informed of the change in jurisdiction.

(21) In response to comments on § 13.15 responsibility for the initial decision has been shifted from the Secretary to the Assistant Secretary—Indian Affairs. This change has been made to provide for an administrative appeal before a decision is made that is final for the Department and reviewable in the federal court.

B. Changes not adopted

(1) Some commenters objected to requiring the citation of the statute or [illegible] which have provided the basis for state assertion of jurisdiction. The objection is based on concern that citation of such a statute might be construed as an admission that state assertion of jurisdiction was legally authorized. The language of this requirement has been modified to make it more clear that it is the state—not necessarily the tribe—which asserts that a particular statute granted the state jurisdiction. This requirement has been retained because it is good legislative practice to know what statutes may be affected when taking action that may result in their effective repeal.

(2) One commenter recommended language to the effect that these regulations establish the right of tribes to [illegible] jurisdiction. This [illegible] has not been adopted because it is the statutes—not these regulations—which establishes that [illegible] merely provide a [illegible] by which a tribe can exercise the [illegible] established in the statute.

[illegible] of [illegible] reassumption of [illegible] the Act [illegible] be [illegible] different term in the regulations. The concern of the commenter that the term "reassumption" might implicitly concede that the reservation of a petitioning tribe has ever been subject to exclusive state jurisdiction is effectively answered by the explicit language of the section. A tribe need not admit that a state actually has jurisdiction. A petition may be filed if a state has been asserting jurisdiction, regardless of whether such assertion is valid.

(4) A comment that the regulations provide that tribes may regain jurisdiction lost because of a federal adjudication has not been adopted. Section 108 of the Act authorizes reassumption only when jurisdiction has been conferred on a state pursuant to a law. Strictly speaking, jurisdiction is not conferred on a state through court decisions. The decisions simply conclude that a certain law has caused a transfer in jurisdiction.

(5) A comment that reassumption include jurisdiction over child welfare services and investigative and preventive interventions in the homes of Indian children has also not been

adopted. The Act only authorizes reassumption over child custody proceedings. It is not the intent of the Act to exclude anyone from providing services to Indian families. It is only when such services may involve placing the child with someone other than his or her parents or Indian custodian that the Act becomes involved. Where jurisdiction is reassumed, social service agencies must comply with the requirements of a tribal court—not a state court—when placing a child.

(6) One commenter objected generally to the amount of information requested on the ground that it discriminates against tribes that have been subjected to state jurisdiction since those tribes already exercising jurisdiction are not required to provide similar information. Most of the information requirements have been retained because such "discrimination" is mandated by the statute. Under 25 U.S.C. 1918 those tribes that wish to reassume jurisdiction are required to submit a "suitable plan to exercise such jurisdiction" and the Secretary is to determine the "feasibility" of the plan. Congress has imposed [illegible] requirements on tribes already exercising Indian child custody [illegible]

(7) [illegible] regulation [illegible] entity [illegible] of a tribe. The [illegible] because [illegible] from tribe to tribe.

(8) One commenter objected to the requirement that the tribe establish a procedure for determining who is a member of a tribe on the grounds that it is the obligation of the parties and the court to make that determination. This recommendation has not been adopted. A method of determining membership was one of the items specifically listed in 25 U.S.C. 1918(b) as a factor the Secretary may consider in determining the feasibility of a plan. It is true that the legal burden for determining whether the Act applies to a particular child is on the parties and the court. This provision does not change that burden. It merely asks that the tribe have a procedure for cooperating with the court or the parties in meeting their burden. Since the tribe is in the best position to know who its own members are, it seems reasonable to ask it to cooperate in that respect. Because of the special needs of children, promptness and certainty are more important in child custody proceedings than they are in most other litigation. Tribal cooperation in this respect will help assure that its members receive the benefits of the Act and will impose only a minimal burden on the tribe.

(9) Some commenters recommended that the Bureau accept without question a tribal governing body's conclusion that the tribe has authorized it to exercise jurisdiction over Indian child custody matters. Under 25 U.S.C. 1918, the Secretary is to determine whether the exercise of jurisdiction is feasible. The exercise of such jurisdiction by an entity that has not been authorized by the tribe to exercise it is clearly not feasible. It has been a longstanding general principle on the part of the Department of the Interior that the Indian tribes are empowered to interpret their own governing documents. Consequently, when this Department is called upon to decide an issue that requires the interpretation of tribal governing documents, it will give great weight to any interpretation of those documents made by an appropriate tribal forum. However, the Department is not necessarily bound thereby. The Secretary cannot accept or acquiesce to a tribal interpretation which is so arbitrary or unreasonable that its application would constitute a violation of the right to due process. *See* Letter [illegible] of Forrest J. Gerard, Assistant [illegible] for Indian [illegible] April 26, 1978, 5 Indian Law Reporter H-17, 18 (1978). Exercise of jurisdiction by an entity not authorized to exercise it would constitute a violation of the right to due process. Accordingly, the requirement of a citation to the provision in the tribal constitution or other governing document, if any, that authorizes the governing body to exercise jurisdiction over Indian child custody matters has been retained so the Department will have the information it needs in order to make the determination of feasibility. The tribal governing body's conclusion on that point will be given great weight and will be upheld if its interpretation is not arbitrary or unreasonable. If the tribal electorate wishes its governing body to exercise such authority despite the Department's conclusion that its constitution or governing document does not authorize the governing body to do so, the constitution or governing document can be amended. Non-tribal courts are sometimes called upon to interpret tribal laws. *See e.g., Quechan Tribe of Indians* vs. *Rowe*, 531 F. 2d 408 (9th Cir. 1976); *Confederated Tribes of the Colville Indian Reservation* vs. *Washington*, 591 F. 2d 89 (9th Cir. 1979). Clarification of the governing body's authority prior to reassumption of jurisdiction will avoid delays later on when the custody of specific Indian children is being decided by the court.

(10) Some commenters also objected to requesting a copy of any tribal ordinances or court rules establishing procedures for exercising child custody jurisdiction. Exercise of jurisdiction by a tribe that has not thought through how it is going to handle the cases that come to it cannot be said to be feasible. The most basic element of due process is the existence of a procedure on which the parties to a dispute can rely as the basis for their rights. Accordingly this requirement has been retained.

(11) A number of commenters objected to the requirement that the tribal court that is established be capable of deciding child custody matters in a manner that meets the requirements of the Indian Civil Rights Act. One commenter argued that after the Supreme Court's decision in *Santa Clara Pueblo* vs. *Martinez*, 436 U.S. 49 (1978), the question of how the Indian Civil Rights Act applies to tribal government activities should be left exclusively to the tribe. In footnote 22 the Court in *Martinez* specifically noted that it may be appropriate to consider Indian Civil Rights Act issues when the Department exercises its approval authority. This Department will not exercise its approval power in a manner that authorizes violations of civil rights. A plan that does not provide for exercise of jurisdiction in a manner that protects rights guaranteed under the Indian Civil Rights Act is not a feasible plan as required by the Indian Child Welfare Act.

(12) One commenter recommended that a tribe only be required to show that it is able to establish the necessary support services. This recommendation has not been adopted. Services should be available at least by the time reassumption occurs. Such services need not be organized in the same fashion as services from traditional social services agencies. Such services need not be funded or controlled by the tribe. All that is necessary is that they be available.

(13) One commenter recommended that reassumption of jurisdiction not be approved unless the tribe could show that it is in "the best interests of children" that jurisdiction would be reassumed. Such a standard is not authorized by the Act. The Act only requires that tribal jurisdiction be "feasible"—not that it necessarily be shown to be better for the children than state jurisdiction. Although the findings in the Act indicate that Congress believes tribal jurisdiction will, in most cases, be better for Indian children, it

did not require that each tribe reassuming jurisdiction prove that point. States are not denied jurisdiction over child custody matters relating to their residents simply because a neighboring state could handle the cases better. Tribes should not be required to compete with neighbouring jurisdictions any more than states are.

(14) A recommendation that paragraph (a)(4) be modified to define in precise terms what is meant by "the requirements of the Indian Civil Rights Act" has not been adopted because it would be virtually impossible to do so in sufficiently complete fashion. The most important requirement of that Act in this context is the due process provision, which requires that disputes be handled in a manner that is fair. An effort to define "fairness" in detail would tend to unnecessarily restrict tribal options. The Department will look for guidance on this issue to the existing body of case law defining what "due process" or "fairness" means in specific situations.

(15) One commenter objected to the requirement in § 13.14 for Federal Register publication of the fact that a petition has been received prior to [illegible] action on the petition. The commenter argued that publication [illegible] tribes an undue burden of having to respond to adverse comments on their petitions. The purpose of publication is not to solicit comments but to give the public and affected officials and agencies some advance notice that a change in jurisdiction may be coming. Although comments will not be solicited, any that are volunteered will be considered and made available to the petitioning tribe or tribes. The primary author of this document is David Etheridge, Office of the Solicitor, Department of the Interior; (202) 343-6967.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Subchapter B, Chapter I, of title 25 of the Code of Federal Regulations is amended by adding a new Part 13, reading as follows:

PART 13—TRIBAL REASSUMPTION OF JURISDICTION OVER CHILD CUSTODY PROCEEDINGS

Subpart A—Purpose

Sec.
13.1 Purpose.

Subpart B—Reassumption

13.11 Contents of reassumption petitions.
13.12 Criteria for approval of reassumption petitions.
13.13 Technical assistance prior to petitioning.
13.14 Secretarial review procedure.
13.15 Administrative appeals.
13.16 Technical assistance after disapproval.

Authority: 25 U.S.C. 1952.

Subpart A—Purpose

§ 13.1 Purpose.

(a) The regulations of this part establish the procedures by which an Indian tribe that occupies a reservation as defined in 25 U.S.C. § 1903(10) over which a state asserts any jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588) Pub. L. 83-280, or pursuant to any other federal law (including any special federal law applicable only to a tribe or tribes in Oklahoma), may reassume jurisdiction over Indian child custody proceedings as authorized by the Indian Child Welfare Act, Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C. § 1918.

(b) On some reservations there are disputes concerning whether certain federal statutes have subjected Indian child custody proceedings to state jurisdiction or whether any such jurisdiction conferred on a state is exclusive of tribal jurisdiction. Tribes located on those reservations may wish to exercise exclusive jurisdiction or other jurisdiction currently exercised by the state without the necessity of engaging in protracted litigation. The procedures in this part also permit such tribes to secure unquestioned exclusive, concurrent or partial jurisdiction over Indian child custody matters without relinquishing their claim that no federal statute had ever deprived them of that jurisdiction.

(c) Some tribes may wish to join together in a consortium to establish a single entity that will exercise jurisdiction over all their members located on the reservations of tribes participating in the consortium. These regulations also provide a procedure by which tribes may reassume jurisdiction through such a consortium.

(d) These regulations also provide for limited reassumptions including jurisdiction restricted to cases transferred from state courts under 25 U.S.C. § 1911(b) and jurisdiction over limited geographical areas.

(e) Unless the petition for reassumption specifically states otherwise, where a tribe reassumes jurisdiction over the reservation it occupies, any land or community occupied by that tribe which subsequently acquires the status of reservation as defined in 25 U.S.C. § 1903(10) also becomes subject to tribal jurisdiction over Indian child custody matters.

Subpart B—Reassumption

§ 13.11 Contents of reassumption petitions.

(a) Each petition to reassume jurisdiction over Indian child custody proceedings and the accompanying plan shall contain, where available, the following information in sufficient detail to permit the Secretary to determine whether reassumption is feasible:

(1) Full name, address and telephone number of the petitioning tribe or tribes.

(2) A resolution by the tribal governing body supporting the petition and plan. If the territory involved is occupied by more than one tribe and jurisdiction is to be reassumed over all Indians residing in the territory the governing body of each tribe involved must adopt such a resolution. A tribe that shares territory with another tribe or tribes may reassume jurisdiction only over its own members without obtaining the consent of the other tribe or tribes. Where a group of tribes forms a consortium to reassume jurisdiction, the [illegible] must adopt a resolution.

(3) The proposed date on which jurisdiction would be reassumed.

(4) Estimated total number of members in the petitioning tribe or tribes, together with an explanation of how the number was estimated.

(5) Current criteria for membership in the tribe or tribes.

(6) Explanation of procedure by which a participant in an Indian child custody proceeding may determine whether a particular individual is a member of a petitioning tribe.

(7) Citation to provision in tribal constitution or similar governing document, if any, that authorizes the tribal governing body to exercise jurisdiction over Indian child custody matters.

(8) Description of the tribal court as defined in 25 U.S.C. § 1903(12) that has been or will be established to exercise jurisdiction over Indian child custody matters. The description shall include an organization chart and budget for the court. The source and amount of non-tribal funds that will be used to fund the court shall be identified. Funds that will become available only when the tribe reassumes jurisdiction may be included.

(9) Copy of any tribal ordinances or tribal court rules establishing procedures or rules for the exercise of jurisdiction over child custody matters.

(10) Description of child and family support services that will be available to the tribe or tribes when jurisdiction reassumed. Such services include any resource to maintain family stability or provide support for an Indian child in the absence of a family—regardless of whether or not they are the type of services traditionally employed by social services agencies. The description shall include not only those resources of the tribe itself, but also any state or federal resources that will continue to be available after reassumption of jurisdiction.

(11) Estimate of the number of child custody cases expected during a year together with an explanation of how the number was estimated.

(12) Copy of any tribal agreements with states, other tribes or non-Indian local governments relating to child custody matters.

(b) If the petition is for jurisdiction other than transferral jurisdiction under 25 U.S.C. 1911(b), the following information shall also be included in the petition and plan:

(1) Citation of the statute or statutes upon which the state has based its assertion of jurisdiction over Indian child custody matters.

(2) Clear and definite descriptions of the territory over which [illegible] be reassumed, together with [illegible] of the size of the territory in square miles.

(3) If a statute upon which the state bases its assertion of jurisdiction is a surplus land statute, a clear and definite description of the reservation boundaries that will be reestablished for purposes of the Indian Child Welfare Act.

(4) Estimated total number of Indian children residing in the affected territory together with an explanation of how the number was estimated.

§ 13.12 Criteria for approval of reassumption petitions.

(a) The Assistant Secretary—Indian Affairs shall approve a tribal petition to reassume jurisdiction over Indian child custody matters if:

(1) Any reservation, as defined in 25 U.S.C. 1903(10), presently affected by the petition is presently occupied by the petitioning tribe or tribes;

(2) The constitution or other governing document, if any, of the petitioning tribe or tribes authorizes the tribal governing body or bodies to exercise jurisdiction over Indian child custody matters;

(3) The information and documents required by § 13.11 of this part have been provided;

(4) A tribal court, as defined in 25 U.S.C. 1903(12), has been established or will be established before reassumption and that tribal court will be able to exercise jurisdiction over Indian child custody matters in a manner that meets the requirements of the Indian Civil Rights Act, 25 U.S.C. 1302;

(5) Child care services sufficient to meet the needs of most children the tribal court finds must be removed from parental custody are available or will be available at the time of reassumption of jurisdiction; and

(6) The tribe or tribes have established a procedure for clearly identifying persons who will be subject to the jurisdiction of the tribe or tribes upon reassumption of jurisdiction.

(b) If the technical assistance provided by the Bureau to the tribe to correct any deficiency which the Assistant Secretary—Indian Affairs has identified as a basis for disapproving a petition for reassumption of exclusive jurisdiction has proved unsuccessful in eliminating entirely such problem, the Bureau, at the request of the tribe, shall assist the tribe to assert whatever partial jurisdiction as provided in 25 U.S.C. 1911(b) that is feasible and desired by the tribe. In the alternative, [illegible] requested by the [illegible] tribe, shall assist the tribe to enter into agreements with a state or states regarding the care and custody of Indian children and jurisdiction over Indian child custody proceedings, including agreements which may provide for the orderly transfer of jurisdiction to the tribe on a case-by-case basis or agreements which provide for concurrent jurisdiction between the state and the Indian tribe.

§ 13.13 Technical assistance prior to petitioning.

(a) Upon the request of a tribe desiring to reassume jurisdiction over Indian child custody matters, Bureau agency and Area Offices shall provide technical assistance and make available any pertinent documents, records, maps or reports in the Bureau's possession to enable the tribe to meet the requirements for Secretarial approval of the petition.

(b) Upon the request of such a tribe, to the extent funds are available, the Bureau may provide funding under the procedures established under 25 CFR 23.32 to assist the tribe in developing the tribal court and child care services that will be needed when jurisdiction is reassumed.

§ 13.14 Secretarial review procedure.

(a) Upon receipt of the petition, the Assistant Secretary—Indian Affairs shall cause to be published in the Federal Register a notice stating that the petition has been received and is under review and that it may be inspected and copied at the Bureau agency office that serves the petitioning tribe or tribes.

(1) No final action shall be taken until 45 days after the petition has been received.

(2) Notice that a petition has been disapproved shall be published in the Federal Register no later than 75 days after the petition has been received.

(3) Notice that a petition has been approved shall be published on a date requested by the petitioning tribe or within 75 days after the petition has been received—whichever is later.

(b) Notice of approval shall include a clear and definite description of the territory presently subject to the reassumption of jurisdiction and shall state the date on which the reassumption becomes effective. A copy of the notice shall immediately be sent to the petitioning tribe and to the attorney general, governor and highest court of the affected state or states.

(c) Reasons for disapproval of a petition shall be sent immediately to the petitioning tribe or tribes.

(d) When a petition has been disapproved a tribe or tribes may repetition after taking action to overcome the deficiencies of the first petition.

§ 13.15 Administrative appeals.

The decision of the Assistant Secretary—Indian Affairs may be appealed under procedures established in 43 CFR 4.350–4.369.

§ 13.16 Technical assistance after disapproval.

If a petition is disapproved, the Bureau shall immediately offer technical assistance to the tribal governing body for the purpose of overcoming the defect in the petition or plan that resulted in the disapproval.

Forrest J. Gerard,
Assistant Secretary—Indian Affairs.

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25 CFR Part 23

Indian Child Welfare Act; Implementation

July 24, 1979

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs hereby adds a new part to its regulations to implement the provisions of the Indian Child Welfare Act of 1978 (Pub. L. 95-608). The Indian Child Welfare Act seeks to protect the best interest of Indian children by promoting the stability and security of Indian families and tribes by preventing the unwarranted and arbitrary removal of Indian children from their Indian homes; establishing procedures for transferring Indian child custody proceedings from state courts to the appropriate tribal courts, setting forth criteria for placement of children voluntarily or involuntarily removed from their parents, guardians, or custodians; [illegible] of intervention in state court proceedings by the child's parents, relatives or the child's tribe in [illegible] adoption [illegible] of Indian children, and [illegible] grants to Indian tribes and [illegible] on or "near" reservations [illegible] to plan, establish, [illegible] and manage child placement [illegible] service programs to carry out [illegible] of the Act. It is intended that [illegible] published in 25 CFR [illegible] jurisdiction [illegible] and [illegible] for [illegible] child [illegible] Notice.

EFFECTIVE DATE: These new regulations [illegible] are effective August 30, 1979.

FOR FURTHER INFORMATION CONTACT: Raymond V. Butler, Chief, Division of Social Services, Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20245 (703-235-2756).

SUPPLEMENTARY INFORMATION: On April 23, 1979 there were published in the Federal Register (44 FR 23993) proposed regulations for the Indian Child Welfare Act. Interested persons were given 30 days in which to submit written comments regarding the proposed regulations. Thorough and careful consideration was given to all comments received during this period. Many comments were subsequently adopted but certain others were not.

The function of regulations is to provide rules that the issuing agency will follow in carrying out the responsibilities assigned to it by an Act of Congress. Under the Indian Child Welfare Act, responsibility for the conduct of most aspects of Indian child custody proceedings remains with state and tribal courts. Where the responsibility lies with the state or the tribe, it is the state or tribe that has both the authority and the responsibility to establish rules or procedures to carry out those responsibilities.

The simple fact that a statute deals with Indians does not authorize the Department to promulgate rules governing all aspects of its implementation. For example, 25 U.S.C. 194 governs the burden of proof in certain cases involving Indians, but does not authorize the Department to regulate the courts in such cases. An agency may not promulgate binding rules if the ultimate power to determine the content of the law covered by the rules is in the courts. *See generally*, Davis, *Administrative Law Treatise* § 5.03 (1958). By leaving with courts the jurisdiction to decide Indian child custody matters, Congress left to those courts the responsibility of determining how the Act applies to the cases before them.

Some portions of the Act do assign the Interior Department certain responsibilities related to child custody proceedings. For example, the Department is to pay for appointed counsel in some cases, and is to be notified of child custody proceedings in certain instances. Regulations implementing those departmental responsibilities can and do have some impact on court procedures.

[illegible] publication of the [illegible] for state courts as a notice rather than as a proposed rule. They fear that the guidelines will be invalidated by a court for failure to follow the rule making procedures of the Administrative Procedures Act. The guidelines by themselves are not intended to have the force of law; consequently, no court should have occasion to rule on their validity. The guidelines will have the force of law only as they are adopted by individual states as legislation, regulations, or court rules. So long as proper state procedures are followed in adopting them, they will not be subject to challenge on procedural grounds.

A number of commenters apparently assume that all language in the statute must be repeated in the regulations if it is to have the force of law. The statute is fully effective without reference to the regulations. The purpose of the regulations is merely to provide rules for the Department to follow in carrying out its responsibilities under the Act. Statutory language is included at some points in the regulations to explain the context of the rules and to reduce the need to refer to the statute in order to understand the regulations. Repeating or omitting statutory language in the regulations has no effect on the validity of that statutory language.

A number of commenters also recommended that the regulations "correct" what they regarded as loopholes, mistakes, or bad policy contained in the statute. This Department does not have the authority to "correct" alleged mistakes of Congress through regulations. Where statutory language is either vague or ambiguous and an interpretation of that language is necessary for this Department to carry out its responsibilities, regulations may properly provide such an interpretation. Such interpretations, however, cannot be contrary to the plain meaning of the Act itself.

A. Changes Made Due to Comments Received

(1) Section 23.2(b)(5) is revised to read "a crime in the jurisdiction where the act occurred."

This additional language has been added to clarify that an offense allegedly committed by a child must be a crime if committed by an adult at the same place in order to exempt a child custody proceeding from the provisions of the Act. A new sentence has also been added stating that "status offenses" such as truancy and [illegible] (which are not crimes adults can commit) are covered by the Act. This sentence simply states in positive terms the legal effect of the Act in excluding from coverage under the Act only those offenses which an adult can commit.

(2) Section 23.2(d) is revised to include subtitles after each subsection in order to highlight the variances in definitions. These subtitles are: (1) Jurisdictional Purposes; (2) Service Eligibility for Children and Family Service Programs On or Near Reservations; and (3) Service Eligibility for Off Reservation Children and Family Service Programs. In part (2) the Secretary of Health, Education, and Welfare is delineated for further clarification. An additional sentence is included to explain that tribal membership is based on tribal law, ordinance, or custom.

(3) Section 23.2(f), a cross reference to the "guidelines for State Courts" is made for further clarification.

(4) Section 23.2(g), an (s) is added to person to refer to the situation where more than one person is the custodian.

(5) Section 23.2(k), the definition of reservation is added as written in the Act for the purpose of clarification. Reference is frequently made to "the reservation," therefore the inclusion of

this definition in the regulations is necessary.

(6) Section 23.2(l), a definition of "state court" is added for clarification because of the frequent reference to this term.

The definition includes the District of Columbia and any territory or possession of the United States because this Department believes that definition to be consistent with the intent of Congress. Whether the term "state" includes the District of Columbia, territories and possessions depends on the purposes of Congress in enacting the specific legislation and the circumstances under which the words were employed. See e.g., *Examining Board vs. Flores de Otero*, 426 U.S. 572 (1976). In 25 U.S.C. 1902 Congress stated that its intent in passing the Indian Child Welfare Act was to establish minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes. In 25 U.S.C. 1901(4) Congress expressed its concern over the alarmingly high percentage of Indian families broken up by the removal of their children by non-tribal public and private agencies. The District of Columbia, U.S. possessions and territories [illegible] have [illegible] public agencies [illegible] within the [illegible] unlikely that [illegible] exclude any [illegible] the [illegible].

The definition [illegible] government agencies authorized by law to make [illegible] Act regardless of whether they are called courts. This definition [illegible] the statutory definition of [illegible] 25 U.S.C. 1903 [illegible].

(7) Section 23.2 [illegible] renumbered due to the addition of the two previous definitions.

(8) Section 23.3 Policy. "preventative measures" is changed to "measures to prevent the breakup of Indian families" for the purposes of clarification.

(9) The addresses for sending notice to the Secretary are listed in § 23.11(b). The contents of the notice to the Secretary are set out in § 23.11(c). Additional information concerning rights under the Act that the Bureau will include in its notice to the tribes, parents and Indian custodians is listed in § 23.11(d). In response to a comment, this subsection also provides for all [illegible] tribal officials to handle in a confidential manner the information they receive [illegible].

(10) Section 23.11(d). Notice may also be given by "personal service." This type of service is included to give an alternative form of service or "higher standard of protection to the rights of the parent," custodian or tribe as authorized in Section 111 of the Act.

(11) Several commenters expressed concern that the proposed rules in Section 23.11 could be construed as authorizing BIA officials to halt their efforts to identify a child's tribe or to locate the child's parents or Indian custodians after only 15 days of effort. The deadline was included in the proposed regulations to assure prompt action by Bureau officials. Prompt action is needed since the court is free to begin its proceedings only 10 days after notice to the Secretary. Even if the court is willing to continue the case pending Bureau action, a long delay could be prejudicial to the child and other parties to the proceedings. There may be many instances, however, in which 15 days is simply not enough time to complete the search.

Two changes have been made in the regulations to resolve this problem. First, the Bureau is to attempt to complete the search and give notice within 10 days in order to conform with Section 102 of the Act and so that those who are notified will be able to participate in a timely manner in the [illegible]. Second, [illegible] has [illegible] that [illegible] which [illegible] can [illegible] whether the proceedings should be further delayed. Regardless of what action the court takes, the BIA will complete its search efforts.

(12) One commenter suggested that [illegible] would be [illegible] to some extent if the BIA would be willing to undertake searches before a case is actually filed when asked to do so by someone who is considering filing such an action. This suggestion has been adopted in § 23.11(f).

(13) In Section 23.11 [illegible] "has a relationship with an Indian tribe" is changed to "meets the criteria of an Indian child as defined in section (4) of the Act" for further clarification and to relate back to the legislative language.

(14) Section 23.12 is changed to enable any tribe to designate by resolution "or by such form as the tribal constitution or current practice requires" an agent for service of notice.

This [illegible] which [illegible] designated. Some tribes do not issue resolutions, but grant authority for action by other methods.

(15) In Section 23.12 the sentence, "The Secretary shall publish the name and address of the designated agent for service of notice in the Federal Register," is changed by adding the following, "on an annual basis." A current listing of such agents will be maintained by the Secretary, and will be available through the Area Offices. These changes are made to more adequately handle the requests for information regarding agents for service, many of whom could change on a frequent basis.

(16) Section 23.21 is changed to delete the word "non profit" from grant eligibility criteria. Profit making Indian organizations otherwise eligible for grants under this part may apply for said grants for non-profit-making programs. Comments suggested that there are several Indian organizations which have both profit and non-profit component programs. Section 23.21 is also changed to make clear that applicants may apply for a grant individually or as a consortium.

(17) Section 23.22 is changed to make clear that the examples of Indian child and family service programs provided there are, in fact, just examples and [illegible] restrict the kinds of [illegible] and family service programs for which grants may be provided. Some [illegible] to make the overall section more readable.

(18) Section [illegible] is changed to recognize that [illegible] precise quantitative data are not always available to evaluate the need for [illegible] child and family service programs [illegible] data may be [illegible] considered [illegible] insofar as practicable and may [illegible] estimated data as well as actual. Section 23.25(a) is also changed to ensure that quality and relevance of service to Indian clientele be considered when determining Indian access to existing child and family service programs.

(19) Section 23.25(b) is changed to emphasize that the governing body of a tribe may subgrant or subcontract its grant to an Indian organization if it desires to do so.

(20) Section 23.25(c) is changed to give preference for selection for off-reservation grants to off reservation Indian organizations showing substantial rather than majority support from the community to be served. Section 23.25(c) is also changed to waive the substantial community support requirement for certain existing Indian organizations.

(21) Section 23.27(c)(1) is changed to delete reference to distribution of grant

funds based upon ratio of number of Indian children under age 18 to be served under a proposal to number of Indian children under 18 nationally.

(22) Section 23.35(a). To facilitate administration of grants pursuant to 23.27(a), a change was made transferring the administration of grants from the Central Office to the Area Office level.

(23) Section 23.43(a) is changed to specifically reference funds under Titles IVB and XX of the Social Security Act as appropriate matching shares for grant funds provided under this part, because they were specifically referenced in the Act.

(24) Section 23.43(b) is changed to (c), and a new (b) is added to reference agreements between the Department of the Interior and the Department of Health, Education, and Welfare for use of funds under this part.

(25) Section 23.43(b) was added to emphasize section 203(a) of the Act. That section was not addressed in the proposed regulations.

(26) Many recommendations were received concerning design of a funding formula to ensure that all approved grant applicants receive a proportionately equitable share of funds and that small tribes and Indian organizations do not lose out to large tribes and Indian organizations when funds are distributed. These recommendations will be utilized insofar as possible in the formula design. The formula itself will be published at a later date as a Federal Register Notice.

(27) In Section 23.61(a), the address for transmittal of information to the Secretary shall be sent to the Chief Justice of the highest court of Appeal, "the Attorney General, and Governor" of each state. The Governor was added to insure wider distribution of this material among state agencies.

(28) Section 23.61(a)(1) is changed to "Name of the child, the tribal affiliation, and the quantum of Indian blood," to secure more information for the adult Indian individual who is adopted.

(29) Section 23.61(b), or, is inserted between "adoptive or foster parents" who may request information for an adopted Indian individual to correct an error, and comply with the language of the Act.

(30) Section 23.61(b), additional wording has been added to clarify what information will be disclosed for enrollment purposes, for determining rights or benefits and to whom it may be released. These limitations were added to stress not only the confidential nature of this information, but also the importance of enrollment.

(31) Sections 23.91, 23.92, and 23.93 were added to assist the tribes and courts in carrying out the purposes of the Act.

B. Changes Not Adopted

Certain other comments were received and duly considered, but have not been incorporated into the regulations. The following suggested changes were not adopted for the reasons given:

(1) A number of very forceful comments were received to the effect that the Bureau of Indian Affairs had disclaimed its responsibility insofar as would apply to proceedings in the state courts by publishing proposed "Guidelines for State Courts" rather than proposed regulations in Part 23. As many comments indicated, it was initially administratively planned to write the guidelines as regulations. Also, as a result of the public hearings, the National Congress of American Indians and the National Indian Court Judges Association proposed these guidelines as regulations. It is not administrative policy, but rather the strong legal position of the Office of the Solicitor, Department of the Interior, that the material be published as "Guidelines for State Courts." The Office of the Solicitor's legal position is set out at the beginning of this "Supplementary Information" section. Therefore, the "Guidelines for State Courts" are not included as regulations in Part 23 but will be published as a Federal Register Notice.

(2) Section 23.2. Comments were received in each of the following instances regarding the language employed in certain of the definitions of this section:

a (b) The phrase "child custody proceeding" was objected to as being too restrictive and as not encompassing juvenile delinquency proceedings;

b (b)(1) "Foster care placement" as defined was viewed as being too narrow in scope, and as not relating to institutional placements, voluntary placements, and to special circumstances which might be imposed as a result of divorce proceedings.

One commenter recommended that Section 23.2(b)(5) be changed to reflect the statement in the Senate Report on the Act at Page 18 that the definition of child placement includes "juveniles charged with minor misdemeanant behavior who would be covered by prohibitions against incarceration in secure facilities by the Juvenile Justice and Delinquency Prevention Act of 1974." The General Counsel's Office of the Law Enforcement Assistance Administration, however, has informed this Department that incarceration of juveniles charged with minor misdemeanors is permitted under that Act. For that reason, the definition has not been modified to include placements based on such offenses.

c (d) A respondent requested revision in this subsection to expand the definition of "Indian" to include non-Indian children of Indian parents;

d (d & e) Comment called for a more clearly-drawn division between the definitions of "Indian" and "Indian child." (A numbering and a title change were made, with no change being made in content.)

e (f) It was suggested that the proposed definition of "Indian child's tribe" should be reworded so as to deal more explicitly with those cases in which an Indian child is eligible for membership in more than one tribe. Further comment asked that this definition be expanded to make direct reference to Alaska Natives.

f (g) It was suggested that the definition of the term "Indian custodian" be expanded to include Indian social services agencies;

g (j) Usage of the term "transferred" was objected to;

h (q) Request was made that an expansion of the definition of "Indian tribe" be made to include Canadian tribes;

The language was not changed in any of the foregoing definitions because each of the definitions was taken directly from the Act. It cannot be the function of regulations to expand upon or to subtract from legislation as enacted by the Congress.

i (j) One commenter expressed doubt concerning the constitutionality of the definition of "parent" in both the regulations and the statute based on the recent Supreme Court decision in *Caban vs. Mohammed*, 47 U.S.L.W. 4462 (April 24, 1979). The court in that case held unconstitutional a statute permitting an unwed mother, but not an unwed father, to block an adoption by denying consent. Unlike the statute involved in that case, however, the Indian Child Welfare Act does not require a father to be married to have all the rights of a parent. The father need merely acknowledge paternity. This requirement imposes even less of a burden on the father than the "legitimation" requirement imposed by another statute that was upheld by the Supreme Court the same day it decided *Caban; Parham vs. Hughes*, 47 U.S.L.W. 4457 (April 24, 1979). Unlike marriage, neither legitimation nor acknowledgement requires the consent

of the mother. The reason such a requirement is permissible is well expressed in Justice Powell's concurring opinion in *Parham*: "The marginally greater burden placed upon fathers is no more severe than is required by the marked difference between proving paternity and proving maternity." *Id.* at 4460

(3) Two comments were received which requested that a definition for "tribal law or custom" be included in the regulations. Such a definition was written into the proposed guidelines, and it was deemed more appropriate for it to remain therein.

(4) Comments were received asking for definitions of "domicile" and "residence." Ultimate definition of the terminology in question must be in accordance with case law.

(5) Comment was received regarding the proposed definition of the term "parent" relative to its application to the unwed father and the minor unwed parent. No changes were made because (a) the existing definition is not in conflict with the Supreme Court decision rendered in the *Stanley* vs. *Illinois*, 405 U.S. 645 (1972) decision, and (b) the minority of an individual does not affect her or his relationship as a parent

(6) One comment asserted that there was a need to define the standards of evidence and proof in sections 102(e) and (f) of the Act. As these standards have been developed through case law, it was considered imprudent at this point to formulate definitions in connection with this particular Act.

(7) Another group of public comments requested that the designations "extended family" and "member of a tribe" be defined. Both of these terms are defined either by tribal law or by tribal custom. Consequently, no definitions are offered in the regulations.

(8) Section 23.11(5). One comment sought the inclusion of terminology relating to termination proceedings resulting from juvenile delinquency court actions. No additional wording was added to this section because under 25 U.S.C. 1903(1) only placements—not terminations—based on acts of delinquency are excluded from coverage of the Act.

(9) Section 23.11. A comment was received which asked that notice be made to the tribe in all voluntary proceedings. This suggested change was not adopted because the legislation does not, in regard to voluntary proceedings, authorize notice to the tribe, therefore, inclusion of such a regulation would be beyond the scope of the Act.

(10) Section 23.11. An additional comment contended that state courts should be required to give notice "with due diligence." A regulation was not developed for this purpose due to the fact that the Secretary of the Department of the Interior does not have the authority to promulgate regulations governing the conduct of state courts.

(11) Section 23.11. Two commenters posed questions relating to the protection of the civil rights of Indian children, and identified a felt need for the imposition of a specified time limitation restricting the required notice procedure. Approval of changes regarding these issues was not warranted because (a) the Indian Civil Rights Act provides the necessary protections, and (b) due to exigencies of individual cases, a rigid and restrictive time limitation would be impossible to structure.

(12) Section 23.11. One comment called for the insertion in the notice provision of the phrase "reasonable cause to believe that the child was an Indian child." Such an addition is not acceptable because it is not within the scope of the Act as written in the legislation.

(13) Section 23.12. One comment proposed that the regulations be modified to allow tribal organizations to act as designated agents, or as co-ordinators of the duties and services associated with designated agents, for the serving of notice. No regulatory change was made in this instance, as doing so would expand the substance of this section beyond the scope of the Act.

(14) Section 23.12. A single comment was received requesting that membership criteria be published for each of the various tribes. This request will not be complied with because the details of membership requirements are readily available through tribal headquarters offices and Bureau Area Offices. Secondarily, the body of information requested is so extensive as to make its publication within the regulations unfeasible.

(15) A large number of comments received suggested a variety of changes to be made in § 23.12. These suggestions and the reasons they were not adopted are summarized as follows:

A number of comments were received urging that the Department pay any voucher certified to it by a state court without examining it to determine whether the court was correct in concluding that the Bureau should pay. Except with respect to the determination of indigency, this recommendation has not been adopted. Congress has directed that these payments be made from funds managed by the Interior Department. As manager of these funds, this Department is charged by Congress with the responsibility of assuring they are spent only for a Congressionally-authorized purpose. Since this Department is held accountable for the use of these funds, it must retain ultimate authority to refuse payment requests if it believes payment is not authorized by the statute.

Under 25 U.S.C. 1912(b), however, Congress has authorized payment when "the court determines indigency." Since the Congress has left this determination to the courts, this Department will not make its own determination of that issue. Consequently, the provision authorizing the Area Director to refuse payment if the court has abused its discretion in determining indigency has been deleted.

One commenter objected to the use of state standards and procedures for payment of counsel in juvenile delinquency proceedings as the criteria for reasonable fees to be paid counsel under the Indian Child Welfare Act. The Department did consider having vouchers submitted directly to the Department by the attorneys without requiring prior approval by the state court. If that approach had been adopted, the Department would have developed procedures and criteria based on those employed by states where appointed counsel is paid in non-juvenile delinquency child custody cases. Since state courts already have substantial experience in paying appointed counsel in juvenile proceedings (because appointed counsel is clearly required by the U.S. Constitution), the Department concluded the courts were better prepared to make the initial determination as to the reasonableness of the fees requested by appointed attorneys. For that reason, the regulations provide for vouchers to be approved first by the state court. Under the regulations the Department will pay the amount approved by the court unless the Department is prepared to say that the court abused its discretion.

The regulations could have asked the state courts to apply procedures and criteria relating specifically to dependency proceedings. Those procedures and criteria, of course, would have been new to the states involved since the Department is not authorized by Congress to make payments in states where state law authorizes payment in dependency proceedings. The Department concluded administration of the program would be more orderly if states could use the procedures and criteria they are already using in other cases rather than having to apply new rules. There are, of course, differences between juvenile

delinquency proceedings and dependency proceedings. But since delinquency proceedings more closely resemble the type of proceedings [illegible] the Act than did [illegible] for any other [illegible] and states pay appointed counsel, they were [illegible] as the best model.

Some commenters recommended that the deadline for the Area Director to act on the notice be reduced from 15 days to [illegible] days. The deadline has been reduced to ten days. This decision was based on a balancing of the need of attorneys to know promptly whether they are eligible to be paid and the Department's need for time to conduct a [illegible] to determine eligibility.

Some commenters recommended that income from Indian claims, trust funds and certain other sources not be considered in determining indigency. Since this determination is the responsibility of the state court rather than the Department, that recommendation has not been adopted. [illegible] the same reason, the requirements in [illegible] rules that indigency be [illegible] on the same basis as is used [illegible] delinquency proceedings has [illegible]. These issues may be dealt [illegible] guidelines, however.

[illegible] recommended that [illegible] provide for tribal [illegible] the appointment of [illegible] recommendation has not been adopted because under 25 U.S.C. 1912(b) it is the responsibility of the court to appoint counsel. This responsibility has not been assigned to either the Department or to tribes. The courts may, however, wish to seek the assistance of either the Department or the tribe in identifying attorneys with suitable expertise to take these cases. This matter may also be included in the guidelines.

In response to comments, the Bureau Area Office to which notices of appointments are sent has been changed from the office serving the Indian child's tribe to the office designated in § 23.11 for receipt of other notices. A particular Area Office is designated for each state (exceptions noted below). This approach will mean that, in most instances, a state court can send all materials to the same Bureau address. (Arizona, New Mexico, Oklahoma and Utah are exceptions noted in the regulations.)

One comment made the request that a provision be written into the regulations obligating the Bureau to pay an attorney who is found to be ineligible if the Bureau should fail to disapprove payment before the deadline. This comment has not been adopted. Congress has authorized payments only in certain types of cases for certain types of representation. The Bureau is not authorized to pay money merely as compensation for its slowness. A new [illegible] has been [illegible] that a person aggrieved by the failure of the Area Director to act promptly may treat that failure as a denial for purposes of administrative appeal.

Another comment was that the Bureau pay for work done by an attorney on a case he or she, in good faith, believed was an eligible Indian child welfare case up to the time that the attorney is notified that he or she is not eligible for Bureau payments. This comment was also rejected because the Act does not authorize payments based on the good faith of the attorney. If the case is not one covered by the Act, the Bureau is not authorized to pay the attorney regardless of that attorney's good faith beliefs.

(16) Section 23.81. Two additional comments maintained that state courts should be mandated to share with tribal courts all information on final adoptive orders for Indian children. This suggestion could not be incorporated into the regulations because, again, it calls for expansion of the content of the legislation beyond its intended scope.

(17) A comment was made that a central register be established under § 23.81(a) for the purpose of immediate collection and disclosure of information on adoptions. This suggestion extends beyond the scope of the intent of the Act.

(18) A comment was made calling for the identification of the tribal court involved with the child under section 23.81(a). This additional information appeared unnecessary considering the information already provided by the state court to the Secretary.

(19) One comment was made that the Bureau insure the provision of the remedial or rehabilitative services required under section 102(d) of the Act. For families located off-reservation, this can be interpreted as being beyond the authority of the Bureau in its provision of services to off-reservation Indians and is unrealistic due to staff and financial limitations.

(20) One comment was made that the Secretary conduct outreach activity to locate and identify prospective foster and adoptive homes in order to assist states in their efforts to comply with section 105(a) and (b) of the Act. This proposed change was not incorporated into the regulations, as doing so would constitute a duplication of services in that a number of special projects are already engaged in the active recruitment of Indian foster and adoptive families. Moreover, it should be noted that this issue is a responsibility of the states and must be met to fulfill the requirements of the Act.

(21) [illegible] the Bureau publish in the Federal Register the various tribal placement preferences (refer to section 105(c) of the Act). This recommendation was not accepted because the Federal Register is not readily available to the population at large, and it is important that the tribes be contacted directly on these matters.

(22) Comments were received containing specific objections to Bureau of Indian Affairs involvement in regulating grants to be provided under Title II of [illegible] The responsibility for regulating these grants was given by the Act to the Secretary of the Interior who in turn has lawfully delegated that responsibility to the Assistant Secretary—Indian Affairs.

(23) A number of comments questioned [illegible] of the basic Pub. L. 93-638 Indian Self Determination grant [illegible] in relation to these Indian Child Welfare Act grant [illegible] comments also questioned the various grant application [illegible] time frames for [illegible] to the Pub. L. 93-638 format. No changes were made in this regard since the Pub. L. [illegible] levels and time frames for [illegible] applicant actions, has proven administratively feasible for both Bureau and grant applicants.

(24) Some comments received from Tribal governing bodies recommended that tribes be routinely given a proportionately higher ratio of available grant funds than that given Indian organizations. This recommendation was not adopted as the Act does not provide for such an advantage to tribes.

(25) Some comments objected to § 23.22, Purpose of grants, in its entirety. The rationale presented was that a sovereign tribal entity should not be restricted in any way in its decision as to how Federal grant funds will be utilized. The recommendation that § 23.22 be entirely deleted was not adopted. The Act is specific in its direction that grants will be made for the establishment and operation of Indian Child and family service programs with the objective being the prevention of the breakup of Indian families. Section 23.22 attempts to make that basic point and provides examples of such programs without restricting applicants to those examples.

(26) A few comments pertained to the application selection criteria in § 23.25 and recommended that Indian

organizations which are not tribal governing bodies be able to apply for grants for on or "near" reservation programs. This change was not adopted as this Bureau is committed to working in a government-to-government relationship directly with and through tribal government relative to Bureau-funded programs on or "near" reservations. It is also noted that a tribal governing body may sub-grant or subcontract its grant under this part to any Indian organization it wishes.

[27] A few comments pertained to funding available for grants under this part. One comment pointed out that subsidy programs for adopted children should take into account that adoptions are for life and that the grant regulations § 23.22(a)(5)) should provide for subsidies until the adopted child reaches majority. Another comment recommended that § 23.27(c) should delete reference to grant approvals being subject to availability of funds. No changes were made in this overall regulations as the Bureau's appropriations are received from the Congress on an annual basis and the Bureau subsequently may only fund programs on a year-to-year basis dependent entirely upon funds appropriated by the Congress.

[28] One commenter suggested that tribal adoption subsidy grant programs § 23.27(a)(2), be extended to legal guardians as well as to adoptive parents. This recommendation was not adopted as legal guardians can receive payments for foster care from established resources.

[29] One commenter suggested that § 23.91(b) be further clarified and expanded regarding the release of information and method of enrollment for eligible Indian adopted children. It was decided that the Chief Tribal Enrollment Officer only will have access to the tribe information necessary for enrollment where the parent has filed an affidavit of confidentiality. The reason for this change is to limit the number of people who might have access to this information, and to protect its confidential nature, as the Secretary is mandated to do under section 301 of this Act.

[30] Some comments recommended that grants for off reservation programs be provided only to governing bodies of Federally recognized tribes. This recommendation was not adopted since it would unduly limit the application of off reservation Indian child welfare relative to implementation of the Act which specifically authorizes grants for these Indian Organizations.

[31] A comment was made pursuant to section 103(c) of the Act that the Bureau give notice to a parent that any adoption of a child for which the parent had voluntarily terminated parental rights can be invalidated within two years after the adoption if the parent can prove fraud or duress. This recommendation was not adopted because it was felt that this practice, on a general basis, would not be in the best interest of the children involved. If cases arise that warrant this type of assistance, such assistance may be provided on a case-by-case basis.

[32] A comment was made that under Section 105(a) of the Act, requirements should be established regarding the content of Indian child placement records maintained by the states. This recommended change was not adopted because the regulation of state social service agencies does not fall within the authority granted to the Secretary of the Interior.

The authority for issuing these regulations is contained in 5 U.S.C. 301 and sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 209 DM 8. The primary authors of this document are Raymond V. Butler, Chief, Division of Social Services, Bureau of Indian Affairs, and David Etheridge, Office of the Solicitor, Department of the Interior.

Note—The Department of the Interior has determined that this document is not a significant rule and has exempted it from the procedures of Executive Order 12044 and 43 CFR Part 14.

Subchapter D, Chapter I, Title 25 of the Code of Federal Regulations is amended by adding a new Part 23, reading as follows:

PART 23—INDIAN CHILD WELFARE ACT

Subpart A—Purpose, Definitions and Policy

Subpart B—Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel

Subpart C—Grants to Indian Tribes and Indian Organizations for Indian Child and Family Programs

Subpart D—General Grant Requirements

Subpart E—Grant Revision, Cancellation or Assumption

Subpart F—Hearings and Appeals

Subpart G—Administrative Requirements

Subpart H—Administrative Provisions

Subpart I—Assistance to State Courts

Authority: 5 U.S.C. 301, sec. 463 and 465 of the revised statutes (25 U.S.C. 2 and 9)

Subpart A—Purpose, Definitions, and Policy

§ 23.1 Purpose.

The purpose of the regulations in this Part is to govern the provision of administration and funding of the Indian Child Welfare Act of 1978 (Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C. 1901-1932).

§ 23.2 Definitions.

(a) "Act" means the Indian Child Welfare Act, Pub. L. 95-608 (92 Stat. 3073), 25 U.S.C. 1901 *et seq.*

(b) "Child custody proceeding," which shall mean and include:

(i) "Foster care placement"—any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated.

(j) "Termination of parental rights"—an action resulting in the termination of the parent-child relationship.

(k) "Preadoptive placement"—the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement, and

(l) "Adoptive placement"—the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(3) Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime in the jurisdiction where the act occurred or upon an award in a divorce proceeding, of custody, to one of the parents. It does include status offenses, such as truancy, [illegible].

(m) "Extended family member" shall be as defined by the law or custom of the Indian child's tribe, or here, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(d) "Indian" means: (1) *Jurisdictional Purposes.* For purposes of matters related to child custody proceedings any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 or the Alaska Native Claims Settlement Act (85 Stat. 688, 689).

(2) *Service eligibility for on or "near" reservation Children and Family Service Programs.* For purposes of Indian child and family service programs under section 201 of the Indian Child Welfare Act (92 Stat. 3075), any person who is a member, or a one-fourth degree or more blood quantum descendant of a member of any Indian tribe.

(3) *Service eligibility for off-reservation Children and Family Service Programs.* For the purpose of Indian child and family programs under section 202 of the Indian Child Welfare Act (92 Stat. 3073) any person who is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the state in which they reside, or who is a descendent, in the first or second degree, of any such member, or is an Eskimo or Aleut or other Alaska Native, or is considered by the Secretary of the Interior to be an Indian for any purpose, or is determined to be an Indian under regulations promulgated by the Secretary of Health, Education, and Welfare. Membership status is to be determined by the tribal law, ordinance, or custom.

(e) "Indian child" means any unmarried person who is under age eighteen and is either (1) a member of an Indian tribe, or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(f) "Indian child's tribe" means (1) the Indian tribe in which an Indian child is a member or is eligible for membership or (2) in the case of an Indian child who is a member of or is eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts. (Refer to Guideline for State Courts-Indian Child Custody Proceedings.)

(g) "Indian custodian" means any Indian person[s] who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

(h) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

(i) "Indian tribe" means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended.

(j) "Parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.

(k) "Reservation" means Indian country as defined in section 1151 of Title 18, United States Code, and any lands not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual subject to a restriction by the United States against alienation.

(l) "State Court" means any agent or agency of a State including the District of Columbia or any territory or possession of the United States or any political subdivisions empowered by law to terminate parental rights or to make foster care placements, preadoptive placements, or adoptive placements.

(m) "Tribal court" means a court with jurisdiction over child custody proceedings and which is either a court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(n) For other applicable definitions refer to 25 CFR 20.1 and 271.2.

§ 23.3 Policy.

The policy of the Act and of these regulations is to protect Indian children from arbitrary removal from their families and tribal affiliations by establishing procedures to insure that measures to prevent the breakup of Indian families are followed in child custody proceedings. This will insure protection of the best interests of Indian children and Indian families by providing assistance and funding to Indian tribes and Indian organizations in the operation of child and family service programs which reflect the unique values of Indian culture and promote the stability and security of Indian families. In administering the grant authority for Indian Child and Family Programs it shall be Bureau policy to emphasize the design and funding of programs to promote the stability of Indian families.

Subpart B—Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel

§ 23.11 Notice.

(a) If the identity or location of the parents, Indian custodians or the Indian child's tribe cannot be determined, notice of the pendency of any involuntary child custody proceeding involving an Indian child in a state court shall be sent by registered mail with return receipt requested to the appropriate address listed in paragraph (b) of this section.

(b)(1) For proceedings in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York,

North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia or any territory or possession of the United States, notice should be sent to the following address: Eastern Area Director, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, D.C. 20245.

(4) For proceedings in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio or Wisconsin, notice should be sent to the following address: Minneapolis Area Director, Bureau of Indian Affairs, 831 2nd Avenue, S., Minneapolis, Minnesota 55402.

(5) For proceedings in Nebraska, North Dakota, or South Dakota, notice should be sent to the following address: Aberdeen Area Director, Bureau of Indian Affairs, 115–4th Avenue, SE., Aberdeen, South Dakota 57401.

(6) For proceedings in Kansas, Texas, and the western Oklahoma counties of Alfalfa, Beaver, Beckham, Blain, Bryan, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward, notice should be sent to the following address: Anadarko Area Director, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005.

(7) For proceedings in Montana or Wyoming notice should be sent to the following address: Billings Area Director, Bureau of Indian Affairs, 316 N. 26th Street, Billings, Montana 59101.

(8) For proceedings in Colorado or New Mexico, (exclusive of those New Mexico counties listed in paragraph (b)(9) below), notice should be sent to the following address: Albuquerque Area Director, Bureau of Indian Affairs, 5301 Central Avenue, NE., P.O. Box 8327, Albuquerque, New Mexico 87108.

(9) For proceedings in Alaska notice should be sent to the following address: Juneau Area Director, Bureau of Indian Affairs, P.O. Box 3-8000, Juneau, Alaska 99801.

(10) For proceedings in Arkansas, Missouri, and all Oklahoma counties not listed under paragraph (b)(4) above, notice should be sent to the following address: Muskogee Area Director, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma 74401.

(11) For proceedings in the Arizona counties of Apache, Coconino, and Navajo; the New Mexico counties of McKinley, San Juan, and Socorro, and the Utah county of San Juan, notice should be sent to the following address: Navajo Area Director, Bureau of Indian Affairs, Window Rock, Arizona 86515.

(12) For proceedings in Arizona (exclusive of those counties listed in paragraph (b)(9) above), Nevada, or Utah (exclusive of that county listed in paragraph (b)(9) above), notice should be sent to the following address: Phoenix Area Director, Bureau of Indian Affairs, P.O. Box 7007, Phoenix, Arizona 85011.

(13) For proceedings in Idaho, Oregon or Washington, notice should be sent to the following address: Portland Area Director, Bureau of Indian Affairs, 1125 NE Irving Street, Portland, Oregon 97208.

(14) For proceedings in California or Hawaii, notice should be sent to the following address: Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95811.

(c) Notice shall include the following information if known:

(1) Name of the Indian child, birthdate, birthplace.

(2) Indian child's tribal affiliation.

(3) Names of Indian child's parents or Indian custodians, including birthdate, birthplace, and mother's maiden name, and

(4) A copy of the petition, complaint [illegible] upon which the [illegible]

(d) Upon receipt of the notice, the [illegible] shall make diligent effort to [illegible] Indian child's tribe and the Indian child's parents or Indian custodians. Such notice may be by [illegible] mail with return receipt requested or by personal service and shall include the information provided under subsection (c) of this section in addition to the following:

(1) A statement of the right of the biological parents, Indian custodians and the Indian tribe to intervene in the proceedings.

(2) A statement that if the parent[s] or Indian custodian[s] is unable to afford counsel, counsel will be appointed to represent them.

(3) A statement of the right of the parents, the Indian custodians and the child's tribe to have, upon request, up to twenty additional days to prepare for the proceedings.

(4) The location, mailing address and telephone number of the court.

(5) A statement of the right of the parents, Indian custodians and the Indian child's tribe to petition the court for transfer of the proceeding to the child's tribal court, and their right to refuse to permit the case to be transferred.

(6) A statement of the potential legal consequences of the proceedings on the future custodial and parental rights of the parents or Indian custodians.

(7) A statement that, since child custody proceedings are usually conducted on a confidential basis, tribal officials should keep confidential the information contained in the notice concerning the particular proceeding and not reveal it to anyone who does not need the information in order to exercise the tribe's rights under the Act.

(e) The Bureau shall have ten days, after receipt of the notice from the persons initiating the proceedings, to notify the child's tribe and parents or Indian custodians and send a copy of the notice to the court. If within the ten-day time period the Bureau is unable to verify that the child is in fact an Indian, or meets the criteria of an Indian child as defined in section [4] of the Act, or is unable to locate the parents or Indian custodians, the Bureau shall so inform the court prior to initiation of the proceedings and state how much more time, if any, it will need to complete the search. The Bureau shall complete its search efforts even if those efforts cannot be completed before the child custody proceeding begins.

(f) Upon request from a potential participant in an anticipated Indian child custody proceeding, the Bureau shall attempt to identify and locate the Indian child's tribe, parents or Indian custodians for the person making the request.

§ 23.12 Designated tribal agent for service of notice.

Any Indian tribe entitled to notice may designate by resolution, or by such other form as the tribal constitution or current practice requires, an agent for service of such notice other than the tribal chairman and send a copy of the designation to the Secretary. The Secretary shall publish the name and address of the designated agent in the Federal Register on an annual basis. A current listing of such agents will be maintained by the Secretary and will be available through the Area Offices.

§ 23.13 Payment for appointed counsel in state Indian child custody proceedings.

(a) When a state court appoints counsel for an indigent party in an Indian child custody proceeding, for which the appointment of counsel is not authorized under state law, the court shall send written notice of the appointment to the Bureau of Indian Affairs Area office designated for that state in § 23.11 of this part. The notice shall include the following:

(1) Name, address and telephone number of attorney who has been appointed

(2) Name and address of client for whom counsel is appointed

(3) Relationship of client to child.

(4) Name of Indian child's tribe.

(5) Copy of the petition or complaint.

(6) Certification by the court that state law makes no provision for appointment of counsel in such proceedings.

(7) Certification by the court that the client is indigent.

(b) The Area Director shall certify that the client is eligible to have his or her appointed counsel compensated by the Bureau of Indian Affairs unless:

(1) The litigation does not involve a child custody proceeding as defined in 25 U.S.C. 1903(1).

(2) The child who is the subject of the litigation is not an Indian child as defined in 25 U.S.C. 1903(4);

(3) The client is neither the Indian child who is the subject of the litigation, the Indian child's parent as defined in 25 U.S.C. 1903(9) or the child's Indian custodian as defined in 25 U.S.C. 1903(6);

(4) State law provides for appointment of counsel in such proceedings;

(5) The notice of the Area Director of appointment of counsel is incomplete; or

(6) No funds are available for such payments.

(c) No later than 10 days after receipt of the notice of appointment of counsel, the Area Director shall notify the court, the client and the attorney in writing whether the client has been certified as eligible to have his or her attorney fees and expenses paid by the Bureau of Indian Affairs. In the event that certification is denied, the notice shall include written reasons for that decision together with a statement that the Area Director's decision may be appealed to the Commissioner of Indian Affairs under the provisions of the 25 CFR Part 2.

(d) When determining attorney fees and expenses the court shall:

(1) Determine the amount of payments due appointed counsel by the same procedures and criteria it uses in determining the fees and expenses to be paid appointed counsel in juvenile delinquency procedings.

(2) Submit approved vouchers to the Area Director who certified eligibility for Bureau payment together with the court's certification that the amount requested is reasonable under the state standards and considering the work actually performed in light of the criteria that apply in determining fees and expenses for appointed counsel in juvenile delinquency proceedings.

(e) The Area Director shall authorize the payment of attorney fees and expenses in the amount requested in the voucher approved by the court unless:

(1) The court has abused its discretion under state law in determining the amount of the fees and expenses; or

(2) The client has not been previously certified as eligible under paragraph (c) of this section.

(f) No later than 15 days after receipt of a payment voucher the Area Director shall send written notice to the court, the client and the attorney stating the amount of payment, if any, that has been authorized. If the payment has been denied or the amount authorized is less than the amount requested in the voucher approved by the court, the notice shall include a written statement of the reasons for the decision together with a statement that the decision of the Area Director may be appealed to the Commissioner under the procedures of 25 CFR Part 2.

(g) Failure of the Area Director to meet the deadlines specified in paragraphs (c) and (f) of this section may be treated as a denial for purposes of appeal under paragraphs (f) of this section.

Subpart C—Grants to Indian Tribes and Indian Organizations for Indian Child and Family Programs

§ 23.21 Eligibility requirements.

The governing body of any tribe or tribes, or any Indian organization, including multi-service Indian centers, may apply individually or as a consortium for a grant under this part.

§ 23.22 Purpose of grants.

Grants are for the purpose of:

(a) Establishment and operation of Indian child and family service programs. Examples of such programs may include but are not limited to:

(1) Operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children.

(2) Family assistance (including homemaker and home counselors), day care, afterschool care recreational activities, respite care, and employment.

(3) Employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters.

(4) Education and training of Indians (including tribal court judges and staff) in skills relating to child and family assistance and service programs.

(5) Subsidy programs under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate state standards of support for maintenance and medical needs.

(6) Guidance, legal representation, and advice to Indian families involved in tribal, state, or Federal child custody proceedings.

(7) Home improvements programs.

(8) Preparation and implementation of child welfare codes. An example in this regard is establishment of a system for licensing or otherwise regulating Indian foster and adoptive homes.

(b) Providing matching shares for other Federal or non-Federal grant programs as prescribed in § 23.43.

§ 23.23 Obtaining application instructions and materials.

Application instructions and related application materials may be obtained from Superintendents, Area Directors or the Commissioner.

§ 23.24 Content of application.

Application for a grant under this part shall include:

(a) Name and address of Indian tribal governing body(s) or Indian organization applying for a grant.

(b) Descriptive name of project.

(c) Federal funding needed.

(d) Population directly benefiting from the project.

(e) Length of project.

(f) Beginning date.

(g) Project budget categories or items.

(h) Program narrative statement.

(i) Certification or evidence of request by Indian tribe or board of Indian organization.

(j) Name and address of Bureau office to which application is submitted.

(k) Date application is submitted to Bureau, and

(l) Additional information pertaining to grant applications for funds to be used as matching shares will be requested as prescribed in § 23.43.

§ 23.25 Application selection criteria.

(a) The Commissioner or designated representative shall select for grants under this part those proposals which will in his or her judgment best promote the purposes of title II of the Act taking into consideration insofar as practicable the following factors:

(1) The number of actual or estimated Indian child placements outside the home, the number of actual or estimated Indian family breakups, and the need for directly-related preventive programs, all as determined by analysis of relevant statistical and other data available from tribal and public court records and from

the records of tribal, Bureau, public and private social services agencies serving Indian children and their families.

(2) The relative accessibility which the Indian population to be served under a specific proposal already has to existing child and family service programs emphasizing prevention of Indian family breakup. Factors to be considered in determining relative accessibility include:

(i) Cultural barriers,

(ii) Discrimination against Indians,

(iii) Inability of potential Indian clientele to pay for services,

(iv) Lack of programs which provide free service to indigent families,

(v) Technical barriers created by existing public or private programs,

(vi) Availability of Transportation to existing programs,

(vii) Distance between the Indian community to be served under the proposal and the nearest existing program,

(viii) Quality of service provided to Indian clientele; and

(ix) Helpfulness of service provided in specific needs of Indian clientele.

(3) The extent to which the proposed program would duplicate any existing child and family service program emphasizing prevention of Indian family breakup, taking into consideration all factors listed in paragraphs (c)(1) and (2) above.

(b) Selection for grants under this part for on or "near" reservation programs shall be limited to [illegible] of the tribe to be served by the grant. However, the governing body of the tribe may make a subgrant or subcontract with another organizational entity including but not limited to an Indian organization, subject to the provisions of § 23.30.

(c) Preference for selection for grants under this part for off-reservation programs shall be given to those off-reservation Indian organizations which show evidence of substantial support from the Indian community or communities to be served by the grant. However, the Indian organization may make a subgrant or subcontract subject to the provisions of § 23.30. Factors to be considered in determining substantial support include:

(1) Letters of support from individuals and families to be served;

(2) Local Indian community representation in and control over the Indian entity requesting the grant.

(3) The requirements of this subsection do not apply in the case of an existing multi-service Indian center or an off-reservation Indian organization of demonstrated ability which has operated and continues to operate an Indian child welfare or family assistance program.

§ 23.26 Request from tribal governing body or Indian organization.

(a) The Bureau shall only make a grant under this part for an on or "near" reservation program when officially requested to do so by a tribal governing body. This request may be in the form of a tribal resolution, an endorsement included in the grant application or such other forms as the tribal constitution or current practice requires.

(b) The Bureau shall only make a grant under this part for an off-reservation program when officially requested to do so by the governing body of an Indian organization. This request may be in one of the forms prescribed in (a) above and shall be further subject to the provisions of § 23.25(c) (1), (2), and (3) above.

§ 23.27 Grant approval limitation.

(a) *Area Office approval.* Authority for approval of a grant application under this part shall lie with the Area Director when the intent, purpose and scope of the grant proposal pertains solely to an Indian tribe or tribes, or to an Indian organization representing an off-reservation community, located within [illegible] Director's administrative jurisdiction.

(b) *Central Office approval.* Authority for approval of a grant application under this part shall lie with the Commissioner when the intent, purpose and scope of the grant proposal pertains to Indian tribes, off reservation communities or Indian organizations representing different Area Office administrative jurisdictions but located within the Commissioner's overall jurisdiction.

(c) Grant approvals under this section shall be subject to availability of funds. These funds will include those which are:

(1) Directly appropriated for implementation of this Act. Distribution to approved applicants of these appropriated and available funds will be based upon a formula designed to ensure insofar as possible that all approved applicants receive a proportionately equitable share sufficient to fund an effective program. This formula will be published as a Federal Register Notice.

(2) Appropriated under other Acts for Bureau programs which are related to the purposes prescribed in § 23.22.

§ 23.28 Submitting application.

(a) *Agency Office.* An application for a grant under this part for an on or "near" reservation program shall be initially submitted to the appropriate Superintendent for review and recommendation as prescribed in § 23.29.

(b) *Area Office.* An application for a grant under this part for an off-reservation program shall be initially submitted to the appropriate Area Director for review and action as prescribed in § 23.31.

§ 23.29 Agency Office review and recommendation.

(a) Recommendation for approval or disapproval of a grant under this part shall be made by the Superintendent when the intent, purpose and scope of the grant proposal pertains to or involves an Indian tribe or tribes located within that Superintendent's administrative jurisdiction.

(b) Upon receipt of an application for a grant under this part, the Superintendent shall:

(1) Acknowledge receipt of the application in writing within 10 days of its arrival at the Agency Office.

(2) Review the application for completeness of information and promptly request any additional information which may be required to make a recommendation.

(3) Assess the completed application for appropriateness of purpose as prescribed in § 23.22, and for overall feasibility.

(4) Inform the applicant, in writing and before any final recommendation, of any special problems or impediments which may result in a recommendation for disapproval; offer any available technical assistance required to overcome such problems or impediments; and solicit the applicant's written response.

(5) Recommend approval or disapproval following full assessment of the completed application and forward the application and recommendation to the Area Director for further action.

(6) Promptly notify the applicant in writing as to the final recommendation. If the final recommendation is for disapproval, the Superintendent will include in the written notice to the applicant the specific reasons therefor.

(7) In instances where a joint application is made by tribes representing more than one Agency Office administrative jurisdiction, copies of the application shall be provided by the applicants to each involved Superintendent for review and recommendation as prescribed in this section.

§ 23.30 Deadline for agency office action.

Within 30 days of an application for a grant under this part the Superintendent shall take action as prescribed in § 23.31. Extension of this deadline will require consultation with, and written consent of, the applicant.

§ 23.31 Area office review and action.

(a) Upon receipt of an application for a grant requiring Area Office approval, the Area Director shall:

(1) Review the application following applicable review procedures prescribed in § 23.29.

(2) Review the Superintendent's recommendation as it pertains to the application.

(3) Approve or disapprove the application.

(b) In instances where a joint application is made by tribes representing more than one Area Office and/or Agency jurisdiction, the Area Director shall send his or her recommendation for approval or disapproval of the application to the Superintendent and shall forward the application and recommendations to the Commissioner for Central Office action.

(c) Upon taking action as prescribed in paragraphs (a) and (b) of this section, the Area Director shall promptly notify the applicant in writing as to the action taken. If the action taken is disapproval or recommendation for disapproval of the application, the Area Director will include in the written notice the specific reasons therefor.

§ 23.32 Deadline for Area Office action.

Within 30 days of receipt of an application for a grant under this part, the Area Director shall take action as prescribed in § 23.31. Extension of this deadline will require consultation with, and written consent of, the applicant.

§ 23.33 Central Office review and decision.

Upon receipt of an application for a grant requiring Central Office approval, the Commissioner shall:

(a) Review the application following the applicable review procedures prescribed in § 23.29.

(b) Review Agency and Area Office recommendations as they pertain to the application.

(c) Approve or disapprove the application.

(d) Promptly notify the applicant in writing as to the approval or disapproval of the application. If the application is disapproved, the Commissioner will include in the written notice the specific reasons therefor.

§ 23.34 Deadline for Central Office action.

Within 30 days of receipt of an application for a grant under this part the Commissioner shall take action as prescribed in § 23.33. Extension of this deadline will require consultation with a written consent of the applicant.

§ 23.35 Grant execution and administration.

(a) Grant approved pursuant to § 23.27(a) shall be executed and administered at the Area Office level.

(b) Grants approved pursuant to § 23.27(b) shall be executed and administered at the Central Office level provided that the Commissioner may designate an Area Office to execute or administer such a grant.

§ 23.36 Subgrants and subcontracts.

The grantee may make subgrants or subcontracts under this part provided that such subgrants or subcontracts are for the purpose for which the grant was made and that the grantee retains administrative and financial responsibility over the activity and the funds.

Subpart O—General Grant Requirements

§ 23.41 Applicability.

The general requirements for grant administration in this part are applicable to all Bureau grants provided to tribal governing bodies and to Indian organizations under this part, except to the extent inconsistent with an applicable Federal statute or regulation.

§ 23.42 Reports and availability of information to Indians.

Any tribal governing body or Indian organization receiving a grant under this part shall make information and reports concerning that grant available to the Indian people which it serves or represents. Access to these data shall be requested in writing and shall be made available within 10 days of receipt of that request, subject to any exceptions provided for in the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93-502; 88 Stat. 1561).

§ 23.43 Matching share.

(a) Specific Federal laws notwithstanding, grant funds provided under this part for on or "near" reservation programs may be used as non-Federal matching share in connection with funds provided under Titles IVB and XX of the Social Security Act or under any other Federal or non-Federal programs which contribute to the purposes specified in § 23.22.

(b) In the establishing, operating and funding of Indian child and family service programs both on "near" or off-reservation, the Secretary of the Interior may enter into agreements with the Secretary of Health, Education, and Welfare for the use of funds appropriated for similar programs of the Department of Health, Education, and Welfare.

(c) Superintendents, Area Directors, and their designated representatives will, upon tribal or Indian organization request, assist in obtaining information concerning other Federal agencies with matching fund programs and will, upon request, provide technical assistance in developing applications for submission to those Federal agencies.

§ 23.44 Performing personal services.

Any grant provided under this part may include provisions for the performance of personal services which would otherwise be performed by Federal employees.

§ 23.45 Penalties.

If any officer, director, agent, employee of, or any one connected with the management of any tribal, subgrant, contract or subcontract under this part, does embezzle, willfully misapply, steal, or obtain by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract or subcontract, he or she may be subject to penalties as provided in 18 U.S.C. 1001.

§ 23.46 Fair and uniform services.

Any grant provided under this part shall include provisions to assure the fair and uniform provision by the grantee of services and assistance to all Indians included within or affected by the intent, purpose and scope of that grant.

Subpart E—Grant Revision, Cancellation or Assumption

§ 23.51 Revisions or amendments of grants.

(a) Request for budget revisions or amendments to grants awarded under this part shall be made as provided in § 276.14 of this Chapter.

(b) Requests for revisions or amendments to grants provided under this part, other than budget revisions referred to in paragraph (a) of this section, shall be made to the Bureau officer responsible for approving the grant in its original form. Upon receipt of a request for revisions or amendments to grants, the responsible Bureau officer shall follow precisely the same review procedures and time specified in § 23.29.

§ 21.52 Assumption.

(a) When the Bureau cancels a grant for cause as specified in § 220.15 of this Chapter, the Bureau may assume control or operation of the grant program, activity or service. However, the Bureau shall not assume a grant program, activity or service that it did not administer before tribal grantee control unless the tribal grantee and the Bureau agree to the assumption.

(b) When the Bureau assumes control or operation of a grant program cancelled for cause, the Bureau may decline to enter into a new grant agreement until satisfied that the cause for cancellation has been corrected.

Subpart F—Hearings and Appeals

§ 23.61 Hearings.

Hearings referred to in § 220.15 of this Chapter shall be conducted as follows:

(a) The grantee and the Indian tribe(s) affected shall be notified in writing, at least 10 days before the hearing. The notice should give the date, time, places, and purpose of the hearing.

(b) A written record of the hearing shall be made. The record shall include written statements submitted at the hearing or within 5 days following the hearing.

(c) The hearing will be conducted on an informal basis as possible.

§ 23.62 Appeals from decision or action by Superintendent.

(a) A grantee may appeal any decision made or action taken by a Superintendent under this part. Such appeal shall be made to the Area Director as provided in Part 2 of this Chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 23.63 Appeals from decision or action by Area Director.

(a) A grantee may appeal any decision made or action taken by an Area Director under this part. Such appeal shall be made to the Commissioner as provided in Part 2 of this Chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 23.64 Appeals from decision or action by Commissioner.

(a) A grantee may appeal any decision made or action taken by the Commissioner under this part only as provided in Part 2 of this Chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 23.65 Failure of Agency or Area Office to act.

Whenever a Superintendent or Area Director fails to take action on a grant application within the time limits established in this part, the applicant may, at its option, request action by the next higher Bureau official who has approval authority as prescribed in this part. In such instances, the Superintendent or Area Director who failed to act shall immediately forward the application and all related materials to that next higher Bureau official.

Subpart G—Administrative Requirements

§ 23.71 Uniform administrative requirements for grants.

Administrative requirements for all grants provided under this part shall be those prescribed in Part 276 of this Chapter.

Subpart H—Administrative Provisions

§ 23.81 Recordkeeping and information availability.

(a) Any state court entering a final decree or adoptive order for any Indian child shall provide the Secretary of the Interior within 30 days a copy of said decree or order, together with any information necessary to show:

(1) Name of the child, the tribal affiliation of the child, and the Indian blood quantum of the child;

(2) Names and addresses of the biological parents and the adoptive parents;

(3) Identity of any agency having relevant information relating to said adoption placement.

To ensure and maintain confidentiality where the biological parent(s) have by affidavit requested that their identity remain confidential, a copy of such affidavit shall be provided the Secretary.

Such information, pursuant to Section 301(a) of the Act, shall not be subject to the Freedom of Information Act [5 U.S.C. 552] as amended. The Secretary shall insure that the confidentiality of such information is maintained.

The proper address for transmittal of information required by Section 301(a) of the Act is: Chief, Division of Social Services, Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20245. The envelope containing all such information should be marked "Confidential." This address shall be sent to the highest court of Appeal, the Attorney General and Governor of each state. In some states, a state agency has been designated to be repository for all state court adoption information. Where such a system is operative, there is no objection to that agency assuming reporting responsibilities for the purpose of this Act.

(b) The Division of Social Services, Bureau of Indian Affairs is authorized to receive all information and to maintain a central file on all state Indian adoptions. This file shall be confidential and only designated persons shall have access to it. Upon the request of the adopted Indian individual over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Division of Social Services shall disclose such information as may be necessary for enrollment or determining any rights or benefits associated with membership, except the name of the biological parents where an affidavit of confidentiality has been filed, to those persons eligible to request such information under the Act. The Chief Tribal Enrollment officer of the Bureau of Indian Affairs is authorized to disclose enrollment information relating to an adopted Indian child where the biological parents have by affidavit requested anonymity. In such cases, the Chief Tribal Enrollment Officer shall certify to the child's tribe, where the information warrants, that the child's parentage and other circumstances entitle the child to enrollment consideration under the criteria established by said tribe.

Subpart I—Assistance to State Courts

§ 23.91 Assistance in identifying witnesses.

Upon the request of a party in an involuntary child custody proceeding or of a court the Secretary shall assist in identifying qualified expert witnesses. Such requests for assistance should be sent to the Area Director or to the Area where the court proceedings are initiated. Refer to § 23.11(b).

§ 23.92 Assistance in identifying interpreters.

Upon the request of a party in any Indian child custody proceeding or of a court the Secretary shall assist in identifying interpreters. Such requests for assistance should be sent to the Area Director in the Area where the court proceedings are initiated. Refer to § 23.11(b).

§ 23.93 Assistance in locating biological parents of Indian child after termination of adoption.

Upon the request of a child placement agency, the court or an Indian tribe, the Secretary shall assist in locating the biological parents or prior Indian custodian of an Indian adopted child whose adoption has been terminated. Such requests for assistance should be sent to the Area Director in the Area where the court proceedings occur. Refer to § 23.11(b).

Forrest J. Gerard,
Assistant Secretary, Indian Affairs.

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BILLING CODE 4310-02-M

Senator MELCHER. Our first witness today is Theodore Krenzke, Acting Deputy Commissioner, Bureau of Indian Affairs.

Please proceed, Mr. Krenzke.

STATEMENT OF THEODORE KRENZKE, ACTING DEPUTY COMMISSIONER, BUREAU OF INDIAN AFFAIRS, WASHINGTON, D.C.; ACCOMPANIED BY: RAYMOND BUTLER, CHIEF, DIVISION OF SOCIAL SERVICES; AND LOUISE ZOKAN, CHILD WELFARE SPECIALIST, BUREAU OF INDIAN AFFAIRS

Mr. KRENZKE. Good morning, Mr. Chairman.

I am pleased to be here today to testify in behalf of the Department of the Interior at this oversight hearing on the Indian Child Welfare Act of 1978.

With me are Mr. Raymond Butler, Chief of the Bureau's Division of Social Services, and Ms. Louise Zokan, child wealfare specialist on our central office social services staff.

With your permission, I would like to highlight my statement which has been submitted for the record.

Senator MELCHER. Without objection, it will be included in the record at the end of your testimony.

Mr. KRENZKE. In particular, I am pleased to be here today because it was largely through the efforts of this committee that the Indian Child Welfare Act came into being. This fact is, in our judgment, truly a landmark piece of Indian legislation.

In brief, this legislation, in the first place, provides protection for Indian children and their families through the establishment of certain judicial requirements placed on State judicial systems and public and private child placement agencies in relation to the placement of Indian children. Second, it authorizes several options for Indian tribes to exercise certain authorities over Indian child custody proceedings. Finally, it further authorizes Indian tribes and Indian organizations to provide child welfare and family services programs to the Indian people.

All of these are aimed at helping Indian children to remain with their own families, if at all possible, and otherwise to remain within their own culture.

First, I would like to briefly focus on actions taken by the Department relative to the implementation of the act. In the first place, as prescribed by the law, copies of the act, the committee reports, and an explanation of the act were mailed in a timely fashion to all State attorneys general, Governors, chief justices, and State public welfare directors. Second, by January 30, 1979, a working draft of the regulations was widely distributed to all tribes, States, and Indian organizations. Third, during the month of March 1979, 12 public hearings were conducted throughout the country to elicit comments and suggestions for the proposed regulations. Fourth, the proposed regulations were then published for comment on April 23, 1979, and the final regulations were published on July 31, 1979.

Based on an Interior Department Solicitor's opinion, the judicial requirements imposed upon State courts were issued as guidelines rather than regulations. These were published in the Federal Register on November 26, 1979.

Although we lack solid data at this point, it appears from the number of notices received, from inquiries on Indian identification, and 223 adoption reports received from 26 States, that States generally have been well informed about the act and are conforming to its requirements.

From what we hear from the Indian country, we believe that the most important and critical issue pertaining to implementation of the act is the administration and funding of the title II Indian child and family services program.

In this first year, the Bureau had a total of $5.5 million available to implement the grant program. In contrast, it received 247 grant applications requesting nearly $20 million. Of these, 157 were approved as meeting the criteria of the act and the regulations, these having a total of $11.1 million in requested funds.

Of the approved applications, 74 percent were from Indian tribes, and 26 percent were from Indian organizations. Our written statement goes into more detail concerning the distribution of the grant funds. However, a few points relating to the grants are worthy of special mention.

First, the grant process was a competitive one, and through this process 90 applications were disapproved; 22 of those disapproved appealed this action, thus adding to a delay in getting the funds out to the approved applicants.

Second, it should also be noted that under the act the Bureau has accepted responsibility for a new service population: those served by Indian organizations in urban communities.

Additionally, under the act a number of tribes will be reassuming jurisdiction over child custody proceedings. Two have already been approved for this purpose, and three more will be approved by the Department shortly.

Third, under the formula distribution method, 42 percent did receive the amounts requested in their proposal, indicating a realistic understanding by them of this process. The Bureau recognizes that in future years the formula distribution will undoubtedly need to be adjusted. It is certainly our intent to seek to improve the formula in order to provide the best possible level of service to the most Indian children and families in need of such services within available funds.

In conclusion, one other point I would like to make is that we recognize that Congress envisioned close cooperation between the Bureau of Indian Affairs and the Department of Health and Human Services to assure maximum use and benefits from all available resources.

This concludes my testimony, and I will be happy to respond to any questions that you might have.

Senator MELCHER. Fiscal years 1980 and 1981 show a unit cost per child per month during fiscal 1979 and fiscal 1980 at $343, but decreasing in fiscal 1981 to $282. The Department of Education and HEW apparently picked up $2.4 million of costs for handicapped children, but the decrease in unit costs does not look realistic. What happened?

Mr. KRENZKE. These child welfare service funds, that are being referred to, relate to the cost of care for Indian children who are either institutionalized or in individual foster homes, and in this case a number of those children were handicapped children who had, in previous years, the total amount of their care in institutions paid by

the social services funding within the Bureau of Indian Affairs. As a result of the relatively new Education for the Handicapped Act, the educational costs of their care are now being picked up, not by HEW, but by the Office of Indian Education Services within the Bureau of Indian Affairs.

So, a proportion that was formerly relating to the education of the handicapped is not reflected in that figure for fiscal year 1980.

I just might add one additional thing on that. This does not relate to the $5.5 million in any way that is being used to fund the Indian Child Welfare Act; this is another aspect of the Bureau's child welfare activities.

Senator MELCHER. I do not think I have gotten an answer to my question at all. My question relates to the figure in fiscal 1979 and 1980 being $343 and a few pennies; and then in fiscal 1981 it went down to $282 and a few pennies; and you have said, "Well, we are taking out the handicapped portion of it." My question is right to the point, I think. If you do not understand my point, I will keep going after it.

Education costs are rising. You have a base figure here that remained constant in 2 fiscal years, which is entirely beyond my understanding because I know educational costs were rising between those 2 fiscal years. The child support costs were rising between those 2 fiscal years, but now you have them reduced, and you have said it is just because of the handicapped funds. I think you are locked into a base figure, and you are not changing it even though the costs are changing.

Mr. KRENZKE. Maybe I have missed the point, but I certainly agree with you that the total cost of care of children in institutions, both the handicapped and the nonhandicapped, has risen. The only point that we are making in relation to this is that our per-unit costs have decreased because a portion of those costs no longer show up in Indian services, but a portion of those costs is also reflected in the education.

We certainly have no disagreement with you, that the total cost has risen. If these had been separated out in previous years, this would certainly reflect that. We certainly do agree with you, but we do not feel that we are locked into a number and that our appropriations requests have continued to reflect the increasing cost of care, particularly in institutional types of situations. We are endeavoring to provide a service that meets the specific needs of the handicapped.

Senator MELCHER. Taking the 1979 figure and separating out whatever could have been charged against the handicapped, how much difference is this $282 for fiscal 1981?

Mr. BUTLER. Mr. Chairman, in 1979 the cost of the education portion for the handicapped Indian students who were in institutional care was about $1.8 million.

Senator MELCHER. How much per capita? How much of the $343 was represented by that $1.8 million, when you divided it out?

Mr. BUTLER. That would represent approximately $50 per child.

Senator MELCHER. Subtract $50 from $343, and you come down to $293.

Mr. BUTLER. For 1981 it is estimated to be around $61.

Senator MELCHER. So you are still using the base figure.

If you are not meeting these costs, just tell me. That is the point of my question.

Mr. KRENZKE. OK. I think the answer to that is that we are meeting the costs of children who require either group placement in institutions and group homes or in individual foster care. I am not aware of any children needing foster or institutional care who have been turned down by the Bureau for lack of funds.

Senator MELCHER. I am going to refresh your memory. When you gave Congress the figures in 1979 for fiscal 1980, you were estimating $401.52 instead of $343.18; that was for fiscal 1980. You did not get it; you did not clear that through OMB; it did not show up in your budget request. So what happened? The costs did not go down; the cost continued to rise.

If you are just telling me what the administration's position is, I can understand; but if you are just trying to tell me that the costs did not go up and that you are meeting everything that you planned to meet, I cannot understand it.

Mr. KRENZKE. I think the basic response to your question is that we have received the funding that is necessary to provide for the care of children needing placement outside of their own homes and to provide the kind of care that these children need.

I admit that I am somewhat confused by some of those numbers there; and if you would permit us, we would be pleased to provide some additional detailed information on that.[1]

Senator MELCHER. I am referring to the Bureau's statement to the Congress. It was a budget request for fiscal year 1980. Obviously, it was made in 1979, but I do not have what date that was. It showed that $401.52 was the estimated amount that you needed. That did not show up in your budget request for 1980. This is just what you provided for Congress as an estimate and you could not clear it through OMB because when your budget came up it was still based on $343.18 for fiscal year 1980. Is that not correct?

Mr. BUTLER. Yes, sir, for the fiscal 1980–81 request.

Senator MELCHER. What do you mean, "for the fiscal 1980–81 request"?

Mr. BUTLER. In the fiscal year 1981 budget request, the unit cost for fiscal year 1980 is reflected as $343.

Senator MELCHER. That is right. But just exactly a year before that, your estimate for fiscal year——

Mr. BUTLER. 1981 was going to be $401.

Senator MELCHER. No; do not misunderstand me. I am reading off this, and this is your estimate for your request in fiscal year 1980. This is what you said in 1979. It was going to be $401.52 for this fiscal year, but when you got the budget for this fiscal year, it was $343.18.

Mr. BUTLER. And the reason for that, Mr. Chairman, is that in the House report we were cut $7.5 million in our welfare grants. The Senate report restored $2.5 million of the House cut and left us with a $5 million reduction in welfare assistance grants over that which was originally requested.

Senator MELCHER. Then when you came up for your request for fiscal year 1981, you went back to $343.

[1] Not received at time of printing.

Mr. BUTLER. That was in accordance with the funds that were actually appropriated to us by the Congress for fiscal year 1980.

Senator MELCHER. Yes; and your request was for the same thing for fiscal year 1981.

Mr. BUTLER. That is correct, Mr. Chairman.

Senator MELCHER. The point that I am trying to arrive at is, that does not reflect the increase. Were you going to use that figure only because that became the position of OMB and the administration?

Mr. BUTLER. That is basically correct, Mr. Chairman.

Senator MELCHER. Thank you.

We come across this in every Department. If it is not really what you think you need, we have to know that, despite what OMB's and the administration's position is. We need to have some guidance on what it is, and we are skeptical that what we have now for fiscal year 1982 is really going to be adequate. We will go over that very carefully because we think that is still based on the $285—or whatever it is—the $343 less handicapped costs.

The formula grant allocation you used to distribute the fiscal year 1980 grant money really looks like it favored the very small units: the villages in Alaska and some of the tribal units in California. I am not denying that they probably needed it, but what about the bigger tribes? They probably have more problems.

Can you justify the grant awards for California and Alaska? I think you can probably justify any of them, but can you justify a system that seems to treat the minority of native communities, that are really tiny in their units, better than the bigger reservations.

Mr. KRENZKE. I would like to ask Mr. Butler if he would go into some detail, as he has spent a great deal of time working on that, but I would like to say this at the outset.

The basic intent of it was to the effect that all tribes should have an opportunity to apply for it, and a further factor was that it was recognized that there needed to be a kind of bottom to the grant funding for any given individual tribe if they were to be able to provide a basic level of service. But let me ask Mr. Butler to go into detail on that.

Mr. BUTLER. Mr. Chairman, there is no question about that. The basic initial formula was designed for this, the first year of the grants, with the basic purpose in mind that as many of the Indian tribes and Indian organizations who desired to do so could at least get into the grant system.

In the hearings that were held in March 1979 in regard to the development of the regulations, there were several comments received, many of which were received from the smaller tribes saying that the larger tribes get the lion's share of the money and we always get left out.

There was, likewise, considerable testimony at those hearings from the urban Indian organizations who were very fearful that the Indian tribes were going to get all the money and that they were going to be left out.

Therefore, the purpose in mind in designing this formula distribution system in the first year was to afford as many of those groups an opportunity to compete and be awarded grants as possible.

It is very true, Mr. Chairman, that, for example, in the State of California the Bureau of Indian Affairs has had no child welfare

services program. This is the first year. There are a number of those small groups in California. The same is true in Alaska.

Senator MELCHER. I think we understand that point, and I appreciate your bringing up that point for both Alaska and California because they were not organized as a tribe and the setup just did not fit. They did not get anything.

Now the question is: What are you going to do after this first year? How do we blend this out?

Mr. BUTLER. I would also comment, Mr. Chairman, that with respect to some of the larger tribes, a number of them did have some funding under our previously existing 1978 congressionally mandated $3.8 million ongoing child welfare program funding.

A good example of that, Mr. Chairman, was the Navajo Tribe which was receiving 25 percent of those available funds already.

But certainly it is our judgment that the formula distribution system, as the Indian tribes and the Indian organizations develop their programs, introduce specific programs that we will be going to in consultation with them—a unit cost type of formula distribution. In other words, a determination will be made, for example, of what is the average unit cost of daycare. If a tribe or Indian ogranization provides a daycare program for their working families, we will then have a cost designed for that type of program.

The same will be true, Mr. Chairman, if some of the court systems that will undoubtedly be desired by a number of the Indian tribes, develop a cost formula based on the actual costs of delivering the type of service that they deem desirable to meet the needs of their people.

Senator MELCHER. I am sure that the testimony we are going to get from the tribes themselves will help in arriving at this. I understand you have been discussing how best to formulate a plan with the committee staff during the past several weeks; is that correct?

Mr. BUTLER. Yes, sir.

Senator MELCHER. Most of the $15,000 grant awards were for purposes of developing child welfare programs. In light of the budget request for fiscal 1981, it does not appear that any of these grant recipients are going to be able to institute the programs they have planned during this next budget cycle.

As thin as grant money is spread, it appears questionable just what can be achieved in fiscal 1981. That, of course, begins pretty promptly on October 1. It is questionable what can be achieved during that period, other than more planning grants. Can you comment on that?

Mr. BUTLER. Mr. Chairman, I think we only need to reflect back on the applications that were received this year—in the first year. As Mr. Krenzke testified, 247 applications totaling $20 million were received.

There is no question, Mr. Chairman, but that in 1981, as the Indian tribes and Indian organizations develop their programs which will be more costly, that with the limited funding available they will become more competitive. There is no question about it.

Given the interest in this—and my boss may chastise me for saying this, but I will say it anyway—and given the cost of services and inflationary rates alone, I would suggest to the committee that a more realistic figure for 1981 would be in the neighborhood of $14 or $15 million to adequately fulfill them. Now, you may have to protect me for saying that, Mr. Chairman, but I am being realistic.

Senator MELCHER. I do not think you need to be protected. That is the kind of answer we want, because we have to know whether we are talking realistically. If we just put a little bit of money for grants for planning, however, necessary that is, and we are not moving beyond that to really implement the plans that are acceptable, then we are not really accomplishing the purpose of the act.

We appreciate that. We will have to struggle with that and see where we can dig up the money. We would like to know that we are not just passing legislation that gets on paper. We like to know that we are implementing that legislation and then carrying out the intent of that legislation; and it does take some money. So we are very appreciative of that answer.

Mr. KRENZKE. I would just like to add one comment to what Mr. Butler has indicated. That is that the leadership of the Bureau of Indian Affairs in the Assistant Secretary's office has been aware of this. It has been one of those struggles that we have from time to time. This came down at a point when there was particular effort relative to fiscal controls.

Senator MELCHER. Yes, budget cutting.

In Congress, each individual—435 Members in the House and 100 Senators—has to bite that bullet. We all say we want a balanced budget. It is necessary. Then, after having bitten that bullet, we have to figure out what programs we are really going to back. I think this is one we really need to back.

We are going to have to be realistic about it. We want a balanced budget, but we cannot end all of the programs that are so necessary if we are going to help people. This is one that I think is very necessary to help Indian people, and, in this case, children.

So, we have to know what the minimum amount is to carry out the purposes, and I think you have given us the right answer. This committee will be very vigorous in supporting that and attempting to find funds for it, which means we have to crimp some other funds so we can have the funds for this one. But we must have our priorities, and this is a priority which this committee feels should come very high.

Thank you, gentlemen, for your testimony.

[The prepared statement of Mr. Krenzke follows:]

PREPARED STATEMENT OF THEODORE C. KRENZKE, ACTING DEPUTY COMMISSIONER, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and Members of the Committee, I am pleased to appear before you because it was largely through the efforts of this Committee that we have the Indian Child Welfare Act which is the subject of our discussion today. The Indian Child Welfare Act, enacted into law on November 8, 1978, is, in our judgment, truly a landmark piece of legislation in the field of Indian Affairs. It provides protection for Indian children and their families through the establishment of certain judicial requirements imposed upon the state judicial system, and establishes certain placement and service requirements upon the public and private child placement and family service agencies. The Act also provides several options for the Indian tribes to exercise certain authorities over child custody proceedings, and authorizes Indian tribes and Indian organizations to provide Indian child and family services programs for their people.

Let me first speak to the implementation stages of the Act. The requirements of section 402 were met on December 6, 1978, in which copies of the Act, Committee reports and an explanation of the Act were mailed by Secretary Andrus to all state Attorneys General, Governors, Chief Justices, and State Public Welfare Directors. An initial working draft of regulations was widely distributed to

all tribes, states, and Indian organizations on January 30, 1979. During the month of March 1979 a series of 12 public hearings were held throughout the country by the National Congress of American Indians and the National American Indian Court Judges Association, under contract with the Bureau, to solicit comments and suggestions for the development of proposed regulations. The proposed regulations were published for comment on April 23, 1979, and the final regulations were published on July 31, 1979.

There was some controversy over the issue of whether the Department could promulgate regulations mandating how state courts would implement the requirements placed on them by the Act. The Department determined that the Act did not authorize the Bureau of Indian Affairs to regulate state courts except in a few limited areas where the Act gave specific responsibilities to the Department (such as keeping adoption records supplied by the state courts).

Therefore, only regulations that governed how the Department would carry out the responsibilities specifically assigned to it under the Act were published as mandatory regulations. The Department also published Guidelines for State Courts on November 26, 1979, setting forth the Department's interpretations of the statutory requirements imposed on state courts.

Although we have no solid data, based on the number of notices received, inquiries on Indian identification, and 223 adoption reports received from 26 states as required by Title III, it appears that the states have been well informed and are conforming to the requirements of the Act.

Now, let me turn to what we consider, and what we hear from the Indian tribes and Indian organizations to be the most critical and important issue related to the full implementation of the Act, namely the administration and funding of the Title II Indian Child and Family Services Programs. In this first year, 1980, we received carryover authority of fiscal year 1979 monies of $3 million and $2.5 million in new money, for a $5.5 million grant program. In addition, $3.8 million is available in 1980 from on-going child welfare programs. We received 247 grant applications totaling $19,827,033 in funding requests.

Grants were funded on a formula basis which allocated for approved grants a base of $15,000, plus an add-on in relationship to the percentage of the total Indian client population to be served by the applicant, multiplied by the remaining funds available after all approved grants received their initial base. Thirty-eight percent of the applications were for grants under $25,000 and 71 percent of these grants were funded at the level they requested. The smallest grant funded was from the Phoenix Area for $8,666. The largest grant was a consortium of 41 villages from the Juneau Area at a cost of $634,227. Both grant applicants received the level of funding requested. It should further be noted that twenty consortia consisting of 198 tribes made grant applications, and were approved for funding.

As you may have discerned from my earlier statements, 90 grant applications were disapproved by our Area Offices. This grant process was a competitive process—due to the large number of applications. There were twenty-two appeals from disapproved grant applicants, which was the primary reason for the delay in the funding to applicants during this initial period.

The Congress, in enacting this legislation, realized that full implementation of the Indian Child Welfare Act would be dependent upon a close cooperation between the Bureau of Indian Affairs and the Department of Health and Human Services. Therefore, concerted efforts are being made at the administrative levels of the Bureau and Health and Human Services to ensure that Indian people receive maximum benefit from, and utilization of, all available resources.

This concludes my prepared statement, and I will be pleased to respond to any questions the Committee may have.

Senator MELCHER. I would now like to call on our next witness: Bobby George, director of social welfare, Navajo Nation, Window Rock, Ariz.

STATEMENT OF ANSLEM ROANHORSE, SUPERVISORY SOCIAL WORKER, BISTATE PROJECT DEPARTMENT, DIVISION OF SOCIAL WELFARE, NAVAJO NATION; ACCOMPANIED BY PATRICIA MARKS

Mr. ROANHORSE. Good morning, Mr. Chairman.

Senator MELCHER. Good morning.

Before you give us your statement, is it my understanding that Chairman MacDonald and the Navajo Nation support the Navajo-Hopi bill as it is, lying on the Pre ident's desk.

Mr. ROANHORSE. Mr. Chairman, I am not fully aware of the bill.

Senator MELCHER. You are not fully aware of it?

Mr. ROANHORSE. No, sir.

Senator MELCHER. Could you get an answer for me by noon?

Mr. ROANHORSE. Yes, sir.

Senator MELCHER. If you are not fully aware of it, we have been fully aware of it on this committee for about 5 years now. Of course, this committee has not been in existence for 5 years, but going back to when it was in the Senate Interior Committee and going back to when I served on the House Subcommittee on Indian Affairs, I have been very much aware of the Navajo-Hopi issue. We have been spending an awful lot of time on this committee over the past year trying to make that acceptable to the Navajo Nation.

I thought it was acceptable when we had the bill in front of us, and it is now on the President's desk. If the Navajo Nation has some problem with it, I want to know personally, directly, myself.

Please proceed.

Mr. ROANHORSE. Thank you, Mr. Chairman.

My name is Anslem Roanhorse, and I am here representing Mr. Bobby George and will present testimony on the Indian Child Welfare Act on behalf of the Navajo Tribe of Window Rock, Ariz. With me is Ms. Patty Marks.

Senator MELCHER. Could we get those names again, please, because they are substituted for Bobby George?

Mr. ROANHORSE. I am Anslem Roanhorse.

Ms. MARKS. I am Patricia Marks.

Senator MELCHER. Thank you very much. Please continue.

Mr. ROANHORSE. The passage of the Indian Child Welfare Act, Public Law 95–608, was welcomed and supported by Indian tribes throughout the country including the Navajo Tribe. Since the passage of this legislation several States have reported and referred Indian child welfare cases to the Navajo Tribe, and subsequently some families have been reunited, and some are in the process of being reunited, or other arrangements are being made in light of the best interests of the Indian child.

Nonetheless, as the Indian tribes proceed with the implementation of the act, some ambiguities begin to emerge, such as the amount of funding, mechanism, or regard for tribal priority and authority in child welfare.

The Navajo Tribe is concerned about the incorporation of ongoing child welfare moneys with funds authorized under title II of the Indian Child Welfare Act. Our understanding is that the two program funding sources should be administered under one process; namely, the permanently authorized grant process of Public Law 95–608. However, the fact of the matter is that the ongoing child welfare funds will be transferred from tribal programs already in operation.

Apparently the Navajo Area Bureau of Indian Affairs officials and Navajo tribal leaders were not consulted before the Bureau of Indian Affairs officials at the Washington level made a decision to transfer ongoing child welfare moneys into title II of the Indian Child Welfare

Act. This decision undoubtedly affects some ongoing child welfare reiated programs. The consideration and respect for tribal priorities, policies, and defined needs are essential if the intent of the Indian Child Welfare Act is to be fully carried out.

The new application and grant process of Public Law 95–608 also allows for competition between Indian tribes and Indian organizations from off-reservation settings. The increased number of applications for very limited funds only decreased possible appropriations to Indians in reservation settings where the majority of the Indian children are, where the needs most exist, and where the greatest challenge and responsibility lie for the fullest implementation of the Indian Child Welfare Act. The intent to protect the best interest of Indian children and to promote the stability of Indian tribes and families is minimized when the availability of funds to Indian tribes is reduced.

The procedure and regulations for awarding grants should be revised to allow for more Public Law 93–638 contracting mechanism which will ensure tribal priority and authority in child welfare.

The grant formula, as developed by the central office of the Bureau of Indian Affairs to insure that approved applicants receive a proportionally equitable share efficient to fund an effective program, does not and will not truly reflect the needs, especially on reservations. The formula as developed does not take into account the total population to be served and the high cost of various services associated with Indian child welfare such as legal services, transportation costs, foster care, day care, medical costs, et cetera.

The $47,005 that the Navajo Tribe received under the Indian Child Welfare Act title II grant is not enough for a population that numbers over 130,000 people, where the number of children aged under 18 exceeds 70,000, and where the land base covers 125,000 square miles. The Navajo Tribe's initial request amounted to $2.7 million. The allocation of $47,005 is not sufficient for the Navajo Tribe to even use this allocation as the non-Federal matching share for title XX of the Social Security Act, as provided for in the Indian Child Welfare Act.

Presently, the Navajo Tribal Bi-State Social Services Department contracts for title XX services from the States of Arizona and New Mexico, and any financial assistance pursuant to the act will further the role and responsibility for Navajo Tribal Bi-State Social Services activities in child welfare. Several other programs from the Navajo Nation, which submitted applications to provide needed child welfare services and other services to prevent family breakups, may not be considered for funding under Public Law 95–608 grants if additional funds are not made available.

Further, many State and private agencies are still not fully aware of the intent of Public Law 95–608. In order to expedite full implementation of the legislation, we ask the Congress to mandate Federal and State agencies to become fully aware of the legislation and, where feasible, encourage financial and technical assistance to Indian tribes and organizations.

In closing, we ask that the Congress of the United States give its complete support and assistance to the Indian tribes and Indian organizations in making sufficient resources available.

Thank you.

Senator MELCHER. Thank you.

Without objection, we are now going to insert in the record the June 27, 1980, letter signed by Frank E. Paul, vice chairman, Navajo Tribal Council, along with correspondence from the Inter-Tribal Council of Arizona, the Department of the Interior, and the Navajo Nation.

[The material follows. Testimony resumes on p. 75.]

THE NAVAJO NATION
WINDOW ROCK, NAVAJO NATION (ARIZONA) 86515

JUN 27 1980

PETER MacDONALD
CHAIRMAN, NAVAJO TRIBAL COUNCIL

FRANK E. PAUL
VICE CHAIRMAN, NAVAJO TRIBAL COUNCIL

Senate Select Committee of Indian Affairs
Senate Office Building
Washington, D. C. 20510

Gentlemen:

Passage of the Indian Child Welfare Act came as a welcomed support to the Navajo Tribe, its children and families. There have already been many heartwarming success stories about the reunification of Navajo families. The testimony today, regarding some of these incidents, will show how family members are directly affected and how tribal social workers and frequently social workers from the various states have worked together cooperatively under the Act to reunite families.

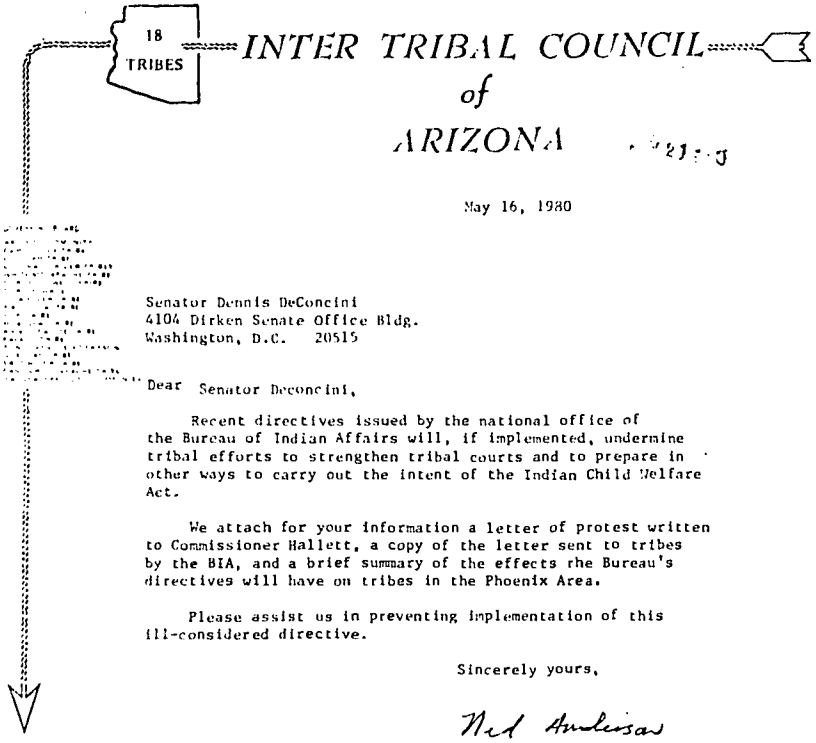
There is one primary concern - that the Indian Child Welfare Act, through its application and funding processes not undermine the goals of the Indian Self-Determination Act.

While the Indian Child Welfare Act serves to strengthen the Navajo family, and grants authority to the Tribe to regain jurisdiction over its members -- the Navajo child, the funding application process for Indian Child Welfare grants does not utilize any 93-638 procedures. While these procedures are not applicable to the off-reservation organizations, they should remain applicable on the reservation.

I hope that your review of the Act and its regulations will include changes in these areas.

Frank E. Paul
Vice Chairman
Navajo Tribal Council

69-083 O - 80 - 4



INTER TRIBAL COUNCIL
of
ARIZONA

May 16, 1980

Senator Dennis DeConcini
4104 Dirken Senate Office Bldg.
Washington, D.C. 20515

Dear Senator Deconcini,

Recent directives issued by the national office of the Bureau of Indian Affairs will, if implemented, undermine tribal efforts to strengthen tribal courts and to prepare in other ways to carry out the intent of the Indian Child Welfare Act.

We attach for your information a letter of protest written to Commissioner Hallett, a copy of the letter sent to tribes by the BIA, and a brief summary of the effects rhe Bureau's directives will have on tribes in the Phoenix Area.

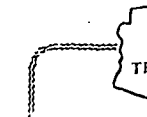
Please assist us in preventing implementation of this ill-considered directive.

Sincerely yours,

Ned Anderson

Ned Anderson
President, Inter-Tribal
Council of Arizona/
Chairman, San Carlos
Apache Tribe

Enclosures



INTER TRIBAL COUNCIL of ARIZONA

May 15, 1980

Commissioner William Hallet
U.S. Department of Interior
Bureau of Indian Affairs
1951 Constitution Ave., N.W.
Washington, D.C. 20245

Dear Commissioner Hallet:

We are writing to protest recent actions of the B.I.A. Washington office that will have serious adverse effects on tribally operated child welfare programs on Indian Reservations.

Without consulting B.I.A. Area office personnel or tribal leaders about the possible effects of the change, your Washington office has announced that 3.8 million dollars of "ongoing child welfare" funds will be transferred from tribal programs already in operation to a grant award program under Title II of the Indian Child Welfare Act, effective October 1, 1980.

The action clearly subverts the intent of Congress expressed in the Act: "to promote the security and stability of Indian tribes and families":

--by preventing unwarranted removal of Indian children from their Indian homes;
--by mandating recognition of the authority of tribal courts; and
--by establishing standards for the placement of Indian children in foster or adoptive homes. It undermines the development of tribal courts and of family support services that tribal governments must be able to sustain if they are to assume greater responsibility for preventing the break-up of Indian families.

We are attaching a fact sheet that illustrates the effect that the Bureau directive will have on tribally operated child welfare programs in the Phoenix Area.

Commissioner William Hallet
May 15, 1980
Page Two

We urge you to rescind the recent Bureau action affecting child welfare services; and we urge you to consult tribal leaders and your own field staff before proceeding further to implement Title II of the Indian Child Welfare Act.

Sincerely yours,

Ned Anderson

Ned Anderson
President

cc: President Carter
Secretary of Interior
Congressional Delegations of Arizona,
Nevada, Utah, and California

FACTS AND TRIBAL ISSUES ON BIA
DISCONTINUANCE OF ON-GOING CHILD WELFARE FUNDING

Child Welfare Programs Under "Ongoing Child Welfare" Funds

In 1977, at the insistence of the Congress, the Washington office of the Bureau of Indian Affairs set aside $3,800,000 to be used for "ongoing child welfare" programs on Indian reservations. The "ongoing child welfare" funds were not drawn from new appropriations, but were transferred from existing BIA programs, such as General Assistance.

BIA Area social service offices were instructed to encourage tribes to develop their own child welfare programs, emphasizing family support services, delinquency prevention programs and programs of support to tribal courts in the disposition of child custody and child protection cases. All parties were led to believe that the funds for tribal programs would be available on an "ongoing" basis, hence the term "ongoing child welfare" funds.

In the Phoenix Area, the following programs were established:

Delinquency Prevention

Fort McDowell - Year-round Youth Support Program
Gila River - Year-round Youth Recreation Program
Fort Mohave) - Summertime Delinquency
Uintah & Ouray Ute Tribe) Prevention Programs

Family Support

White Mountain Apache - Crisis Intervention and Protective Services for Families at Risk
Salt River Pima-Maricopa - Parent Training Program
Hualapai - Quadrupled a small amount of "ongoing child welfare" money by using it as match for Title XX funds for a family support program.

Court Support

Salt River Pima-Maricopa - Foster Home Recruitment, Training and Supervision; Counselor for the Youth Home
San Carlos Apache - Indian Court Services, emphasizing support for the Juvenile Court.
Cocopah - Tribal Court Coordinator
Nevada Inter-Tribal Council - Indian Court Services and Community Organization

Grants under Title II of the Indian Child Welfare Act

When an announcement was issued of grants to be made under Title II of the Indian Child Welfare Act, many Phoenix area tribes submitted applications for programs designed to enhance or strengthen those already

established with "ongoing child welfare" funds. In the Phoenix Area, 28 applications were submitted. Phnenix BIA Area Office and Phoenix Area tribes were not informed that the "ongoing child welfare" funds would be transferred to the grant program under Title II of the Indian Child Welfare Act. Tribes assumed they would be competing for new money.

In a letter dated March 25, 1980 and received by tribes around April 7, 1980, tribes were informed by the Bureau of Indian Affairs that beginning in Fiscal Year 1981, "ongoing child welfare" funds will no longer be available. Funds for programs of family support, delinquency prevention, or court support services will have to be obtained in competition with other tribes and with off-reservation organizations under Title II of the Indian Child Welfare Act. The Title II grant award competition is already over for 1981. Phoenix Area tribes will be faced with scrapping innovative programs that are already being operated successfully.

What does the recent directive mean for Child Welfare Services on Indian Reservations?

Indian Child Welfare Act

The Washington Office of BIA has set up a competitive grant award program with:

$2,000,000 - New money
$3,800,000 - Taken from existing "Ongoing Child Welfare" programs
$3,200,000 - Transferred from General Assistance and other existing BIA programs

Effect on Phnenix Area

Phoenix Area tribes now receive $660,000 in "ongoing child welfare funds."

In 1981, nine Phoenix Area tribes and two Indian organizations will receive less than $300,000 for programs under the Indian Child Welfare Act. The other 17 applications for Indian Child Welfare funds (or 60% of the total) were rejected.

Phoenix Area BIA will return to paying only for out-of-home placement of Indian children. Family support, delinquency preventinn, and court support services can no longer be encnuraged. Tribes that used their "ongoing child welfare" funds as match for other social service funds will lose both resources.

ITCA, Inc.
14MAY80

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
PHOENIX AREA OFFICE
P.O. Box 7007
Phoenix, Arizona 85011

IN REPLY REFER TO

March 25, 1980

Memorandum

To: Agency Superintendents, Phoenix Area
Attention: Social Services

From: Area Director

Subject: Discontinuance of On-Going Child Welfare Funding - FY 1981

Information has been received from the Commissioner's Office advising us that FY-80 is the last year for On-Going Child Welfare funding. In FY-81, these funds will be incorporated with the P.L. 95-608 Indian Child Welfare Act grant funds.

This change will have a direct impact on a number of P.L. 93-638 contracts now operating with on-going child welfare funds as all or part of their funding source. We do not know when additional directives on this matter will be issued from the Commissioner's Office. However, there are some initial actions to be undertaken without delay.

Your immediate attention shall be given to the following actions:

1. Notify all tribal governing bodies within your area of jurisdiction that we have been informed that there will be no on-going child welfare funds for allocation by tribe or agency for FY-81. This includes special accounting components 2269 through 2277.

2. Remind all tribal governing bodies that Indian Child Welfare grant funds are awarded on a competitive basis. They are not allocated on the same basis as banded funds.

3. Advise the tribes that there is no guarantee that programs currently operated with on-going child welfare funds will be refunded for operation in FY-81.

4. Tribes or tribal organizations which have current P.L. 93-638 contracts funded solely with on-going child welfare funds shall be advised to begin to evaluate their program in relation to the objectives of the Indian Child Welfare Act. This should be their first step in preparation of a P.L. 93-608 grant application for funds to continue the program in FY-81, if this is their desire.

5. Tribes or tribal organizations with current P.L. 93-638 contracts that are funded with both on-going child welfare funds and other Bureau assistance funds shall be advised to analyze their current operation. They should develop a P.L. 93-638 recontracting package, with a proposed budget which does not include any item to be funded in total or in part from any of the components of the on-going child welfare funds. There should also be developed a completely separate P.L. 95-608 grant application, with a budget that does not contain any item to be funded in total or in part from P.L. 93-638 contract funds.

6. Tribes or tribal organizations should be advised that P.L. 93-638 contract funds and P.L. 95-608 grant funds must be accounted for independently from each other, even when the grant funds are used for a component which is an integral part of the overall contract program.

7. P.L. 95-608 grant applications are not to be submitted together with P.L. 93-638 contract applications. There are separate regulations, separate review processes, and separate decision processes for grants and contracts.

8. Tribes and tribal organizations shall be informed that requests for information and/or technical assistance from the Area Office should be made before the announcement of the next Indian Child Welfare Act grant application cycle. These requests should be routed through the agency superintendent's office. It should be made clear that after a grant proposal has been sent to the Area Director by the agency superintendent, technical assistance by Area Office staff cannot be provided.

Early planning and careful proposal preparation should enhance both the approvability and fundability of proposals submitted.

Questions on this matter should be directed to the attention of the Area Social Worker.

Acting Asst. Area Director

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Navajo Area Office
Window Rock, Navajo Nation, Arizona 86515

IN REPLY REFER TO
P. L. 93-638

RECEIVED
MAR 6 1980
MAR 11 1980

Mr. Peter MacDonald

Chairman, Navajo Tribal Council

Attention: Bobby George, Director, Social Welfare

Dear Mr. MacDonald:

This will acknowledge receipt of the Navajo Tribe's letter of intent dated February 28, 1980, to use P. L. 93-638 grant funds to match State Title XX funds for Bi-State Social Services.

Please find enclosed, two copies of the Application Package for Indian Self-Determination grants. The accompanying guidelines on purposes for Indian Self-Determination grants in this packet should be useful in determining if the proposed grant match is an appropriate project under the guidelines.

The Central Office memorandum from the Director, Office of Indian Services dated October 31, 1978, "Fiscal Year 1979 Guidelines for Administration of Self-Determination Grant Program", remains in effect. The primary intent of the P. L. 93-638 grant program is to strengthen tribal governmental capabilities, particularly in areas related to improvement of a tribe's financial management system or merit personnel system. A second purpose cited by the Indian Self-Determination and Education Assistance Act is to improve the tribe's capacity to enter into P. L. 93-638 contracts and thirdly, to allow the tribe to plan, design, monitor or evaluate Federal programs serving the tribe. There are additional purposes cited in the Act, these are to allow those tribes which already have sophisticated governmental and administrative capabilities to use funds for other purposes cited under the Act.

The P. L. 93-638 grant allotment as of this date remains tentative. We have been advised that the final advice of allotment will be submitted to Navajo Area, on or by March 15, 1980. As soon as the allotment is received, we will advise the Navajo Tribe.

MAR 3 1980
PETER MACDONALD
Chairman, Navajo Tribal Council

We have been further advised by our Central Office to expect a cutback in grant funds. In view of the limited grant funds expected, we must again request as we did last year, that the Tribal BIA-Federal Relations Committee prioritize the grant projects it desires to be funded for Fiscal Year 1980. The Committee should be fully informed regarding the purposes for P. L. 93-638 grants in order to minimize the possibility of Bureau disapproval of grant applications due to inappropriate grant projects proposed. The Bureau will not accept P.L. 93-638 grant applications for formal review unless they are prioritized and approved by the BIA-Federal Relations Committee.

We hope the above information will be useful in the development of the grant application, should you determine to proceed with the request.

Sincerely yours,

Dwight E. Mitchell

ACTING Area Director

Attachments

NAVAJO NATION

PETER MacDONALD
CHAIRMAN, NAVAJO TRIBAL COUNCIL

FRANK E. PAUL
VICE CHAIRMAN, NAVAJO TRIBAL COUNCIL

The Honorable Dennis DeConcini
United States Senator
4104 Dirksen Senate Office
Building
Washington, D.C. 20510

Dear Senator DeConcini:

Thank you for your past efforts on behalf of the Navajo Tribe.

The Navajo Tribe has been informally notified that it is to receive $47,000 for Indian Child Welfare Funds. As you may recall from my earlier correspondence, the Navajo Tribe had submitted an application for approximately $2.6 million.

The Tribal proposal was initially submitted to the Bureau prior to its preliminary deadline last January. That initial proposal listed out a core proposal and sixteen (16) sub proposals, which the Navajo Tribe was later asked to prioritize and make available for Bureau staff review. This was done and the proposal was resubmitted in February according to the Bureau's scheduled deadline.

Your office was contacted to confirm the informal notification and to obtain from the Bureau their reasons for the low level of funding.

The initial reason given was that the Navajo Tribe had not prioritized. The Navajo Tribe and the record confirmed that the Tribe has indicated numerous times that it has prioritized.

This fact was subsequently confirmed by Bureau officials and the Tribe was then informed that the reason it did not receive a more adequate ICWA allotment was because it did not prioritize prior to the January deadline.

A review of the regulations and of all technical assistance memorandums provided the Tribe, does not indicate that prioritization by that date was required nor did it indicate that should prioritization not take place, that the proposal would receive less funding. On the other hand, the Tribe had very precise concerns about prioritizing subcontracts because of past experiences.

I am concerned about the conflicting information received by the Tribe and ask your assistance and that of your staff in obtaining clarification of the policies at hand, and in seeking immediate remedial action.

Sincerely,

Frank E. Paul, Vice Chairman
Navajo Tribal Council

April 12, 1980

MEMORANDUM

To: Mr. Bobby George
Division of Social Welfare

From: Lynn Tetterington
Legal Department

Subject: Use of allocated Federal Funds as Matching funds

In the research I was able to conduct in the time available, I was unable to find any caselaw which supports Mr. Krenzke's memorandum.

In the time available, I was able to research only the Indian Law Reporter and review the appropriate CFR's. In my opinion, the CFR's cited by Mr. Krenzke are very strightforward in indicating thatfederal funds may be used for matching purposes.

It appears that Mr. Krenzke's memo is only an opinion and the Tribe should be allowed a hearing on this matter under the provisions of the Indian Self-Determination Act.

Lynn Tetterington
LOCAL 7246: 365-1105

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

Window Rock, Arizona 86515

July 11, 1979

Memorandum

TO: Assistant Area Director (Community Services)

FROM: Field Solicitor

SUBJECT: Use of BIA Social Services Funds for Matching Title XX Funds

By memorandum dated June 29, 1979, you requested our opinion of a proposal by the Navajo Tribe to contract pursuant to P.L. 93-638 for $689,970 to be used to match $2,069,912 in state funds under Title XX of the Social Security Act of 1935, as amended. Your memorandum generally requested a "review" of various memoranda and a proposal submitted by the Tribe. You attached these documents, 107 pages in all, to your request for our review. One problem we have with your request is identifying exactly what issues you wish us to consider. In order to save our time and yours, we are returning the materials you have sent to us and requesting that you state the questions you have in more detail.

If your question is directed solely to the propriety of using Federal funds to match Title XX funds, I would direct your attention to Acting Deputy Commissioner Butler's September 23, 1977 memorandum to all BIA Area Directors. The memorandum reaffirmed the position that BIA grant funds may be used to match other Federal grant programs funds if the Federal program contributes to the purposes for which P.L. 93-638 grants are made. Regarding the propriety of a P.L. 93-638 contract (not grant) between the BIA and a tribe, Acting Deputy Commissioner Butler stated that "the contract monies become tribal monies with the exception of funds that may be included in the contract for the purpose of distribution by the tribe to eligible Indian persons under the Bureau's general

assistance, child welfare assistance, and miscellaneous assistance programs." While this sentence concerns the character of the money i.e., tribal v. federal, it seems to imply that 93-638 contracts for matching funds to Title XX programs may be proper. The sentence is, however, far from crystal clear. We suggest that your office or the P.L. 93-638 coordinator ask for a clarification of the September 23, 1977 memorandum to determine if P.L. 93-638 contracts to match Title XX program funds have been authorized by this memorandum.

We will be glad to discuss this matter with you once you have received a response from Mr. Butler's office.

Claudeen Bates Arthur
Field Solicitor

William Back

William D. Back
For The Field Solicitor

WDB:gt

Enclosure

Memorandum

TO : All Area Directors
ATTN: Social Services

DATE: 19 DEC 1977

FROM : Chief, Division of Social Services

SUBJECT: Use of Bureau of Indian Affairs Federal Funds as a Match for Title XX Expenditures

Attached for you information is a copy of a memorandum dated November 16, 1977, addressed to Regional Program Directors for Public Services, Office of Human Development Services, Department of Health, Education and Welfare, with regard to the use of Bureau of Indian Affairs appropriated funds as a match for Title XX expenditures. The Regional Program Directors are asked to make the information available to the relevant title XX State agencies in the interest of promoting title XX services for Indian people.

Attached also, for you convenience, is a copy of our memorandum on the subject, sent to All Area Directors, ATTN: Social Services, on September 13, 1977.

Raymond V. Butler

Attachments

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE Services

Regional Program Directors for
Public Services

NOV 16 1977

Acting Commissioner
Administration for Public Services

Use of Bureau of Indian Affairs Federal Funds as a Match for Title XX Expenditures

The Bureau of Indian Affairs has issued to all its Area Directors, the attached memorandum on "Implications for Tribal Social Service Programs of the Revised Regulations, Title XX of the Social Security Act and, of the Regulations, Indian Self-Determination and Education Assistance Act."

APS staff worked with Bureau of Indian Affairs staff on the title XX aspect of the memorandum.

We agreed to provide copies of the memorandum to our regional staff for use in notifying States that have Federal Indian constituents. Therefore, we are requesting that you make copies available to the relevant title XX State agencies in your region in the interest of promoting title XX services for the Indian people, using available BIA funds as the match.

Michio Suzuki

Attachment

Memorandum

TO : All Area Directors
Attention: Social Services

DATE: 23 SEP 1977

FROM : Acting Deputy Commissioner of Indian Affairs

SUBJECT: Implications for Tribal Social Services Programs of the Revised Regulations, Title XX of the Social Security Act and of the Regulations, Indian Self-Determination and Education Assistance Act.

The Revised Regulations for Title XX of the Social Security Act, published in the Federal Register, January 31, 1977, include several provisions which may affect Indian tribes. Three definition changes were made in 45 CFR 228.1 which will affect Indians. The definition of Indian tribal council has been revised for clarification:

> "Indian tribal council means the official Indian, organization administering the government of an Indian tribe, but only with respect to those tribes with a reservation land base. This includes Inter-Tribal Councils whose membership tribes have reservation status."

The definition of Indian tribe has been broadened to include India tribes recognized by the appropriate State authority. (The previous definition covered only those Indian tribes which received Federal recognition.)

> "Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native region, village or group as defined in the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or any other Indian tribe, band, nation, or other organized group or community which is recognized as an Indian tribe by any State Commission, agency, or authority which has the statutory power to extend such recognition."

The final change is the identification of an Indian tribe as a public agency:

> "Other public agencies means State and local public agencies other than the State agency, and Indian tribes."

69-083 O - 80 - 5

The title XX regulations (including the above definitions) do not affect the regulations (including definitions) issued under the Indian Self-Determination and Education Assistance Act. The latter definitions (25 CFR 271.2) are:

> "Indian tribe means any Indian tribe, Band, Nation Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government through the Secretary for the special programs and services provided by the Secretary to Indians because of their status as Indians."
>
> "Tribal government, tribal governing body, and tribal council means the recognized governing body of an Indian tribe.
>
> "Tribal organization means the recognized governing body of any Indian tribe; or any legally established organization of Indians or tribes which is controlled, sanctioned, or chartered by such governing body or bodies or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities; Provided, That a request for a contract must be made by the tribe that will receive services under the contract; Provided further, That in any case where a contract is let to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting of such contract."

Programs of the Bureau of Indian Affairs will continue to be made available only to those entities defined in 25 CFR 271.2; eligibility for title XX programs is governed by 45 CFR 228.

The identification of Indian tribes as a public agency under title XX regulations provides the States with authority to enter into contract with the tribes to provide any or all services set forth in the State Comprehensive Annual Service Program Plan (Services Plan) under title XX regulations. The regulations also provide that such contracts must require that the services under the contract be extended to all categories or people described in the Services Plan and that conditions for services outlined in the State plan will apply. The conditions include meeting the standards prescribed for the service by the State agency; in the case of child day care, however, Federal requirements must be met.

Title XX legislation requires, except with respect to funding made available under P. L. 94-401 ("Social Security Amendment of 1976"), that the State match a certain portion of the expenditures for services for which Federal financial participation will be available.

(With respect to P. L. 94-401, the law provides, during Fiscal Year 1977, $200 million available to States on the basis of population and matchable at 100% both for child day care services and for grants to day care providers to help them employ welfare recipients in jobs related to child day care services.)

While some States have provided the matching share for services on Indian reservations, others have been reluctant to do so. In the past, there have been questions as to whether money appropriated to the Bureau of Indian Affairs but contracted to the tribes could be used by the latter to provide the State's share of the expenditure. Title XX regulations specify that Federal legislation must authorize the use of other Federal funds for matching expenditures under title XX.

Under Section 104 (a) of P. L. 93-638, "Indian Self-Determination and Education Assistance Act," and the regulations of 25 CFR 272.12 and 272.33, Bureau of Indian Affairs grant funds may be used as matching shares for any other Federal grant programs which contribute to the purposes for which P. L. 93-638 grants are made. Tribal funds may be used for matching under Title XX only if such funds are expended pursuant to a purchase of services contract between the State Title XX agency and the tribe. With respect to a contract between the Bureau of Indian Affairs and a tribe under Section 102 of P. L. 93-638 and the regulations 25 CFR 271.11 and 271.12, the contract monies become tribal monies with the exception of funds that may be included in the contract for the purpose of distribution by the tribe to eligible Indian persons under the Bureau's general assistance, child welfare assistance, and miscellaneous assistance programs. The distribution of the latter monies (i.e. general assistance, child welfare assistance, and miscellaneous assistance) are governed by 25 CFR 20 and are not under tribal control. Other monies in such contracts, and monies in other P. L. 93-638 contracts for social services, not involving the distribution of assistance monies, become tribal funds.

Upon completion of a negotiated contract with the State agency, examples of how such matching might be accomplished include: (1) the transfer of funds in the required amount by the tribe to the State; or (2) by certification to the State by a tribe that it is expending funds in the required amount for the purpose of the delivery of title XX services to eligible persons as provided for under the contract.

Under the revised regulation there is a grant program for training personnel who provide services under title XX (45 CFR, Subpart H-Training and Retraining 228.80 - 228.85). Indian community colleges and post-secondary schools may wish to look into this program.

Raymond V. Butler

Acting Deputy Commissioner

THE NAVAJO NATION

PETER MacDONALD
CHAIRMAN, NAVAJO TRIBAL COUNCIL

FRANK E. PAUL
VICE CHAIRMAN, NAVAJO TRIBAL COUNCIL

Mr. William Ballett
Commissioner of Indian Affairs
Bureau of Indian Affairs
1951 Constitution Avenue, N.W.
Washington, D.C. 20245

Dear Commissioner Ballett:

Attached is a correspondence received from Mr. Ted Krenzke regarding allowable uses of Bureau of Indian Affairs P.L. 93-638 Grant Funds. Also, attached are two memorandum received from HEW dated August 22, 1977 and February 26, 1979 indicating this is an allowable use of P.L. 93-638 Grant Funds.

The activities of the Navajo Tribe in successfully implementing cooperation of the states in a common approach to dealing with social services delivery for the Navajo People is most certainly a Self-Determination effort.

I hope that a review of the policies resulting in the determination indicated in Mr. Krenzke's letter of February 19, 1980, will be made and that recommendations to the appropriate congressional and administrative bodies for either a change in policy or a specific clarification will be made.

Sincerely,

Peter MacDonald, Chairman
Navajo Tribal Council

Attachments

Deputy
Commissioner of Indian Affairs

Subject: Use of Bureau of Indian Affairs Funds as a Match for Title XX Expenditures.

To: Navajo Area Director
Attn: Social Services

This refers to your January 10 memorandum, subject above.

The only authority for using Bureau social services funds to match Title XX funds is provided in the Indian Child Welfare Act of 1978 and subsequently in 25 CFR 23.43. In effect, therefore, no Bureau social services funds, save those funds allocated for Indian Child Welfare Act purposes, may be used to match Title XX funds.

In clarification of the third paragraph, page three of the Acting Deputy Commissioner's September 23, 1977 memorandum, we confirm that 1) social services grant assistance funds (general assistance, child welfare assistance, miscellaneous assistance) and social services administration funds shall not be utilized for matching shares under P.L. 93-638 and in implementing contracting and grant regulations (25 CFR 271 and 272).

In this regard, 25 CFR 271-Contracts Under Indian Self-Determination Act does not authorize or provide for matching shares. 25 CFR 272-Grants Under Indian Self-Determination Act provides for matching shares (section 272.33) but only for specific purposes (section 272.12) which do not include Title XX program purposes. Also, in this particular regard, 25 CFR 272 grant funds are specifically appropriated for that purpose and do not have their source in social services program funds.

Theodore C. Krenzke

Bureau of Indian Affairs

PURPOSES FOR INDIAN SELF-DETERMINATION GRANTS

Section 104 of P. L. 93-638

(a) The Secretary of the Interior is authorized, upon the request of any Indian Tribe (from funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto) to contract with or make a grant or grants to any Tribal organization for:

(1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources);

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 of this Act and the additional costs associated with the initial years of operation under such a contract or contracts;

(3) the acquisition of land in connection with items (1) and (2) above: Provided that in the case of land within reservation boundaries or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of the Interior may (upon request of the tribe) acquire such land in trust for the tribe; or

(4) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe.

272.12 25 CFR - (Federal Regulations)

Grants are for the purpose of:

(a) STRENGTHENING AND IMPROVING ADMINISTRATION OF TRIBAL GOVERNMENT.

Examples are:

(1) Developing the capability of the executive, legislative, and judicial branches of tribal government in such areas as administration of planning, financial management, or merit personnel systems.

(2) Improvement of tribally funded programs or activities.

(3) Development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources.

(4) Training of tribal officials and employees in areas relating to the planning, conduct and administration of tribal programs.

(5) Design and implementation of new tribal government operations.

(6) Development of policy-making, legislative and judicial skills.

(b) PLANNING, TRAINING, EVALUATION OR OTHER ACTIVITIES DESIGNED TO IMPROVE THE CAPACITY OF AN INDIAN TRIBE TO ENTER INTO A CONTRACT OR CONTRACTS PURSUANT TO SECTION 102 OF THE ACT AND THE ADDITIONAL COSTS ASSOCIATED WITH THE INITIAL YEARS OF OPERATION UNDER SUCH A CONTRACT OR CONTRACTS.

Examples are:

(1) Evaluation of programs and services currently being provided directly by the Bureau in order to determine:

- Whether it is appropriate for the Indian tribe to enter into a contract pursuant to section 102 of the Act for a program or a portion of a program.

- Whether the Indian tribe can improve the quality or quantity of the service now available.

- Whether certain components should be redesigned but the program should continue to be operated by the Bureau.

- Whether the program as currently administered by the Bureau is adequate to meet tribal needs and, therefore, the Indian tribal organization does not wish to contract or modify the program.

(2) Planning or redesigning a Bureau program before the Indian tribe contracts for it, and development of an operational plan for carrying out the anticipated contract in order to facilitate the transition of the program from Bureau to tribal operation.

(3) Training of Tribal officials and employees in areas related to the conduct and administration of programs of the Bureau which the Indian tribe may wish to operate under contract.

(4) Costs associated with contracting to enable tribal contracting. Examples of such costs include curriculum development in support of tribal contracting of schools, in-service training programs to develop the skills of employees of the Indian tribe on a continuing basis, special on-the-job training activities in support of tribal members being prepared to assume program responsibilities.

(c) ACQUISITION OF LAND IN CONNECTION WITH PARAGRAPHS (A' and (B) OF THIS SECTION. PROCEDURES FOR ACQUISITION OF LAND ARE PRESCRIBED IN 276.11.

(d) PLANNING, DESIGNING, MONITORING, AND EVALUATING FEDERAL PROGRAMS SERVING THE INDIAN TRIBE. An example of this is assisting the tribal government to influence Federal programs presently offered or those that can be offered to the Tribe to assure that they are responsive to the needs of Indian Tribes. A tribal government may monitor and evaluate the operations of such programs which now serve tribal members and replan and redesign those programs to better respond to their needs. Bureau programs which are planned, replanned, designed or redesigned in accordance with this paragraph shall be implemented by the Bureau as prescribed in 272.27.

(e) FUNDS MADE AVAILABLE FOR GRANTS FOR THE PURPOSES DESCRIBED ABOVE MAY BE APPLIED AS MATCHING SHARES FOR OTHER FEDERAL OR NON-FEDERAL GRANT WHICH CONTRIBUTE TO THE PURPOSES SPECIFIED UNDER A AND B, C AND D OF THIS SECTION.

AUG 1 [illegible]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Human Development Services
Washington, D.C. 20201

INFORMATION MEMORANDUM
IM-77-21 (APS)
August 22, 1977

TO: STATE AGENCIES ADMINISTERING TITLE XX SERVICES PROGRAMS

SUBJECT: Use of Federal Funds as the Non-Federal Share for Expenditures Under Title XX

BACKGROUND: 45 CFR 228.53(b)(1) precludes the use of Federal funds as the State's share in claiming FFP unless such funds are authorized by Federal law to be used to match other Federal funds. The only exception to this policy is when the legislative history of a law clearly conveys the intent of Congress that the funds may be used to match other Federal funds, although language to implement this concept does not appear in the law itself.

RELEVANT FEDERAL PROGRAMS: Federal programs which permit use of their funds to match other Federal programs usually set limitations on such use to purposes which accord with their own objectives. Therefore, States must be fully aware of these limitations if they are considering use of the funds of another Federal program to match title XX funds. Included in the following paragraphs are the legal citations authorizing use of the funds of various Federal programs to match the expenditures of other Federal programs, and a description of the kinds of services for which such matching funds may be used. All these programs are relevant to title XX if the State includes the relevant services in its annual services plan.

1. The Appalachian Regional Commission Act, P.L. 90-103, Sec. 107(c), as amended by Sec. 206(c) of P.L. 92-65 and Sec. 111(c) of P.L. 94-188, provides: "The Federal contribution may be provided entirely from funds appropriated to carry out this section or in combination with funds provided under other Federal grant-in-aid programs for the operation of health related facilities and the provision of health and child development services, including title IV, parts A and B, and title XX of the Social Security Act."

The Economic Opportunity Act of 1964, P.L. 88-452, as amended by Sec. 222 of P.L. 90-222, and Sec. 222 as amended by Sec. 205 of P.L. 92-177 and Sec. 2(a)(9) of P.L. 94-36), in a section entitled "Emergency Food and Medical Services," provides: "A program to be known as Community Food and Nutrition . . . to provide . . . financial assistance for the provision of such supplies and services, nutritional foodstuffs, and related services, as may be necessary to counteract conditions of starvation or malnutrition among the poor. (Emergency food and medical services) assistance may be provided by way of supplement to such other assistance as may be extended under the provisions of other Federal programs, and may be used to extend and broaden such programs to serve economically disadvantaged individuals and families . . . without regard to the requirements of such laws for local or State administration or financial participation . . . ."

3. The Housing and Community Development Act of 1974, P.L. 93-383, Sec. 105(a) provides, in part: "A Community Development Program assisted under this Chapter may include only . . .

"(8) provision of public services not otherwise available in areas where other activities assisted under this Chapter are being carried out in a concentrated manner, if such services are determined to be necessary or appropriate to support such other activities and if assistance in providing or securing such services under the applicable Federal laws or programs has been applied for and denied, or not made available within a reasonable period of time, and if such services are directed toward (A) improving the community's public services and facilities, including those concerned with the employment, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreation needs of persons residing in such areas, and (B) coordinating public and private employment programs;

"(9) payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of the Community Development Program . . . ."

4. The Indian Self-Determination and Education Assistance Act, P.L. 93-368, Sec. 104(c) provide: "The provisions of any other Act notwithstanding, any funds made available to a

tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made" (i.e., to further Indian self-determination).

5. Revenue Sharing Funds. The exception to 45 CFR 228.53(b)(1), there is no specific statutory base which authorizes use of these funds to match title XX funds. However, the Office of General Counsel of the Department of Health, Education, and Welfare has ruled that the legislative history attending the repeal of Sec. 104 of P.L. 92-512, "Fiscal Assistance to State and Local Governments," makes it apparent that Congress intended to permit revenue sharing funds to be used as the non-Federal share. Sec. 104, prior to repeal, had specified that no State Government or unit of local Government could use, directly or indirectly, any part of its Federal revenue sharing funds to match Federal funds in a program which required the State or local entity to make a contribution of funds. (Information Memorandum, SRS-IM-77-12(PSA) was issued on February 15, 1977 to recognize the availability of these funds as the non-Federal share.)

You will be informed of any additions to this list as they arise.

INQUIRIES TO: Regional Program Directors, Administration for Public Services.

Acting Commissioner
Administration for Public Services

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Human Development Services
Administration for Public Services

INFORMATION MEMORANDUM
HDS-IM-79-1 (APS)
February 26, 1979

TO: STATE AGENCIES ADMINISTERING TITLE XX SERVICE PROGRAMS

SUBJECT: Use of Federal Funds as the Non-Federal Share for Expenditures Under Title XX

NOTE: This Information Memorandum augments IM-77-21 issued August 22, 1977 which listed five Federal programs whose funds may be used as the non-Federal share of the title XX program (see Relevant Federal Programs, below). This Information Memorandum describes additional sources of Federal funds which may be used in this way.

BACKGROUND: 45 CFR 228.53(b)(1) precludes the use of Federal funds as the State's share in claiming FFP unless such funds are authorized by Federal law to be used to match other Federal funds. The only exception to this policy is when the legislative history of a law clearly conveys the intent of Congress that the funds may be used to match other Federal funds, although language to implement this concept does not appear in the law itself.

RELEVANT FEDERAL PROGRAMS: Federal programs which permit use of their funds to match other Federal programs usually set limitations on the use to purposes which accord with their own objectives. Therefore, States must be fully aware of these limitations if they are considering use of the funds of another Federal program to match title XX funds. Each of the five Federal programs described in IM-77-21 provides funds to States which may be used as the non-Federal share only under the special circumstances set forth in IM-77-21. The five programs are:

1. Child development services under the Appalachian Regional Commission Act.

2. Emergency food and medical services and related services under the Economic Opportunity Act of 1964.

3. Community Development programs under the Housing and Community Development Act of 1974.

4. Tribal grants under the Indian Self-Determination and Education Assistance Act.

5. Revenue Sharing Funds.

Additional Federal programs whose Federal funds may be used as the State share for title XX expenditures if the State includes the relevant services in its annual services plan are:

1. Countercyclical (anti-recession) Revenue Sharing Funds. This is an exception to 45 CFR 228.53(b)(1) in that there is no specific statutory base which authorizes use of these funds to match title XX funds. However, the Deputy Comptroller General of the United States has ruled that countercyclical funds provided to States under title II of the Public Works Employment Act of 1976 (P.L. 94-369, as amended by P.L. 94-447, and title VI of P.L. 95-30) may be used as a State's non-Federal share in the Medicaid program so long as the funds are used for purposes authorized by title III - that is, to maintain the quality of government services whenever the health of the economy, over which State and local governments have no control, declines. HEW's Office of General Counsel has ruled that this opinion is equally applicable to title XX.

2. Juvenile Delinquency Formula Grant Funds. Section 228(b) of P.L. 93-415 specifically authorizes the Administrator of the Law Enforcement Assistance Administration to use no more than 25 percent of formula grant funds authorized under part B of that statute as the non-Federal share of other Federal matching programs to fund an essential juvenile delinquency program which cannot be funded in any other way. The administrator must determine that the juvenile delinquency program is essential, that there is no other way to fund it. Relevant title XX requirements must be met in connection with the service and its expenditures.

3. Indian Child and Family Programs Under Title II of the Indian Child Welfare Act (P.L. 95-608). Under section 202, the Secretary of the Interior is authorized to make grants to Indian tribes and organizations on or near reservations to prevent the breakup of Indian families and to insure that permanent removal of an Indian child from the custody of his parent or Indian custodian is a last resort. A variety of programs and services may be provided and funds appropriated for activities under section 202 may be used as the non-Federal share in connection with funds provided under title XX for services which serve the same purposes. Although no funds were appropriated to carry out title II, the Bureau of Indian Affairs is drafting a supplemental request for FY 1979 and an amended budget for FY 1980 to implement title II.

INQUIRIES TO: Regional Program Directors, APS

Ernest L. Osborne

Ernest L. Osborne
Commissioner
Administration for Public Services

Senator MELCHER. I have a question for you. Would your tribe be willing to work with the BIA in developing new formulas for allocation of the Indian Child Welfare Act funds?

Mr. ROANHORSE. Yes, sir.

Senator MELCHER. Have you tried to work with the BIA before? Have you given them some input and some guidance on this?

Mr. ROANHORSE. Yes; we have been trying to give them guidance, and would also like to let them know what our policy is likely to be in child welfare matters.

Senator MELCHER. Your testimony is very much to the point, and I appreciate that.

Patricia, did you have some testimony?

Ms. MARKS. Yes, sir. I would just like to bring to your attention a couple of very critical points.

Senator MELCHER. Pardon me for a moment, but we are going to have to recess now. The committee is going to meet right here in public session to try to mark up some bills in about 12 minutes. We will recess between now and 11 o'clock, and then we will come back for markup of the bills, which we hope will not take very long. Then we will continue with the hearing. You will be the first witness, right after the recess and markup of the bills.

Ms. MARKS. Thank you, Mr. Chairman.

Senator MELCHER. None of you need leave. You are welcome to stay. Probably, that will be most expeditious. As soon as we finish the markup, we will return to the hearing.

The committee will stand in recess until 11 o'clock.

[Recess taken.]

Senator MELCHER. The committee will come to order.

While we are waiting for Senator DeConcini to get here, we will continue with your hearing.

Patty, you were at the witness table. Will you please proceed?

Ms. MARKS. Thank you, Mr. Chairman.

I am in a kind of unique position today because I am representing two tribes. I am also representing the Yakima.

I can testify on some very key points that I think are problems for both sides.

One of the critical issues which arose with many of the larger tribes' proposals—which were quite extensive—was a question regarding service population. As you will recall, in your discussion earlier today on the formula, it starts with a $15,000 base for those tribes with acceptable proposals and essentially then gives a percentage of the remaining money to tribes based on the children to be serviced.

There appears to be a severe lack of coordination between central office, area office, and the tribe regarding which children are to be counted in relationship to funding. This has put an extreme hardship on many of the larger tribes whose service populations have generally been based on reservation population.

Perhaps the easiest way of going through some of these points is if you would take the testimony which I presented. In the back of that, following the statements which, with your permission, I will submit for the record for Yakima.

Senator MELCHER. They will be made a part of the record immediately following your oral testimony.

Ms. MARKS. Thank you.

In response to Mr. Krenzke's comment this morning, with all due respect to the Bureau, I think that all tribes appreciate the concern that the Bureau had in implementing this program very quickly. However, the quickness of implementation created a number of serious problems.

If you will look at the first page, you will see a letter from the Department of the Interior dated December 12, 1979.[1] This is the letter of notification of grants which was submitted to the area office at Portland.

If you look down to the center of the page, you will see overscored in yellow the date of January 18, 1980. Notice was sent to the area office to notify the tribes on December 12, and exactly 1 month and 5 days later proposals were due, over the Christmas holidays. This put a severe burden on tribes to pull together a package on a totally new program which was unique in its nature.

The problems with communication between central office and area office run very closely hand-in-hand between the Navajo and Yakima. Many area office personnel appear to be unknowledgeable of the specifics of the proposal. A fine example of this is on the next page, the letter of December 26 to the Yakima Nation rejecting their proposal.[2] The reasons for the rejection are overscored in yellow.

No. 1, that the application request exceeds a maximum of $15,000 permitted under grant funding. You will notice in the regulations that the $15,000 was only to be a base. However, the area office chose to reject the proposal because of its excessive funding request.

The next page is a letter of December 28[3]—the tribe's response. Overscored in yellow you will see that there is clearly no maximum above $15,000 per grant; the regulations themselves state that this is just a base amount.

Another unique problem that came up with the Yakima is the question of how a grant proposal of this size was to be submitted. Originally, the Yakima Tribe submitted their request as a 424 grant-contract package. This was a very comprehensive proposal involving construction and involving a number of multifaceted programs. As a result, the area office told the tribe to resubmit the package as the 638 contract, which they proceeded to do.

At that time, the area office was then telling the tribe to submit a 638 contract package, and central office was telling them to submit it as a 424 grant. Exactly the same thing transpired at Navajo. There was a real question as to how larger tribes were to submit grant application packages, and in the meantime, time was going by. This was December 28, and packages and proposals were submitted back into central office less than 20 days later.

So the Yakima Nation actually wrote three, over 250-page proposals, to meet the formula grant.

In both instances, there was a real problem with notifications. Tribes submitted proposals which were sent into central office. It was only on April 1 that I happened to meet over in the central office of the Bureau; and the Yakima Nation and the Navajo Nation both

[1] See p. 86.
[2] See p. 90.
[3] See p. 91.

found out that they were not receiving funding. The way they found out was simply by communication with central office. The area office had failed to notify either one of them that their proposal was not submitted forward.

At this time, the tribes did not know whether to appeal, under the regulations, to the area office or to the central office because they had not received written notice, as the regulations require.

So both tribes have, in the process, appealed to the central office.

Yakima has a unique situation in that they appealed to the central office and a hearing was actually held with a representative from the solicitor's office, Mr. John Saxon. At that time, Mr. Saxon, on May 13, made a ruling that the tribe's proposal was accepted and it should be receiving the $15,000 base.

On June 13—less than 30 days later—the Yakima Nation received a letter telling them that their appeal was denied, that they are no longer included in the $15,000 base. So they are faced with a situation where they have already flown the tribal chairman into Washington, D.C., for one meeting with the Solicitor's office and received what they believe to be a ruling from the Department on their proposal. Now they have received a letter from the area office, which is supposed to be down in the hierarchy, telling them totally the opposite. The tribe is now in the position of not knowing whether they have to reappeal, whether their petition is holding, or whether they are going to be receiving any funding.

This is one thing on which the tribe would greatly appreciate the assistance of this committee in finding out: Was that first appeal hearing a legitimate one, and was the decision made by the Solicitor's office valid?

Senator MELCHER. I think we have been searching during this hearing this morning to find out what can be done after this first year. The points that you have made are very pertinent in finding out whether or not we can anticipate a more direct approach to implementation of the act than has happened in the past.

We will check into this very thoroughly for you, Patty, on behalf of the Yakima Nation. We hope that the testimony we receive today and the cooperation we anticipate with the Department and with the Bureau in the next few months, will help us arrive at a much better arrangement for the coming fiscal year.

Ms. MARKS. I thank you, Mr. Chairman.

I have just one final concern, quickly. The final section of the Indian Child Welfare Act, Public Law 95-608 at this point, discussed the Bureau doing a study of boarding schools. This is of severe concern to the Navajo Tribe because the majority of children on there are bused at great length.

To my knowledge, no action has been taken by the Bureau of Indian Affairs to begin work on this study, and the tribe would be greatly interested in participating directly and giving advice on this study, if it is to begin.

With the Appropriations Committees of both the House and Senate beginning a school construction priority listing, which they are going to stick to, as we understand, the tribe feels that it is very important that this study be completed in a timely fashion if it is going to have proper impact on that construction priority listing.

Senator MELCHER. Thank you, Patty.

It is our understanding that the study has been contracted out. We will find out to whom and when we can anticipate any results from that study and any review of that particular study.

Ms. MARKS. The only point there, Mr. Chairman, would be that both tribes, I think, would think that tribal participation or at least tribal response to that study would be very important.

Senator MELCHER. I agree.

Ms. MARKS. On behalf of both tribes, thank you.

Senator MELCHER. Thank you very much.

Without objection, your statements from the Yakima Nation and appended material will be included in the record at this point.

[The material follows. Testimony resumes on p. 99.]

STATEMENT OF THE YAKIMA INDIAN NATION

Mr. Chairman and members of the committee: The Yakima Indian Nation welcomes the opportunity to present testimony on the important subject of the Indian Child Welfare Act.

The language of the act and the problems and difficulties therein could be the emphasis of our testimony. Some changes may be necessary, but we are functioning as an Indian tribe possessing exclusive jurisdiction over child custody proceedings without major difficulties with the language in the act. The emphasis we want to make in our testimony is the need for additional funding. The need for additional funding is directly related to prior acts of Congress. It was the Congress that created the jurisdictional conundrum in Indian Country under Public Law 83-280. We fought the assumption of jurisdiction by the State of Washington before and after it was effective in 1963. The Indian Child Welfare Act allowed the Yakima Tribe to regain exclusive jurisdiction over Indian child custody proceedings which were two points of law under Washington State's jurisdictional scheme. Prior hearings, testimony and other evidence have shown that when a State assumes jurisdiction over Indian children, the results are disastrous throughout Indian country and we cannot emphasize enough the importance of this jurisdictional base to an Indian tribe. We assert that additional funding is necessary to insure that this jurisdictional base is firm and secure.

Although the act has been law since November 8, 1978, it is still being implemented throughout Indian country in various states. The regulations for reassumption of jurisdiction over child custody proceedings (25 C.F.R. 13) require publication in the Federal Register of a notice stating that the petition has been received and is under review, and these regulations also require a notice that the petition has been approved (with the effective date of the reassumption) or disapproved. The following table is a compilation of these notices that have been published in the Federal Register as of _____:

Tribe petitioning for reassumption of jurisdiction	Petition published	Petition approved	Petition effective	Petition disapproved
Confederated Tribes and Bands of the Yakima Indian Nation.	Nov. 15, 1979	Jan. 11, 1980	Mar. 28, 1980	
Omaha Tribe of Nebraska	Feb. 4, 1980	Mar. 28, 1980		
La Courte Oreilles Band of Lake Superior Chippewa Indians.	Jan. 21, 1980			Apr. 24, 1979.
Spokane Tribe of the Spokane Reservation	Mar. 15, 1980			
White Earth Reservation	Mar. 21, 1980			
Muckleshoot Indian Tribe	Mar. 27, 1980			
Confederated Tribes of the Colville Indian Reservation.	May 1, 1980			

This table clearly shows the Yakima Tribe as the first Indian tribe to petition for reassumption and to have that petition approved. The date of receipt, approval and effective date are significant and will be discussed later. Further the Yakima Tribe hired staff to implement the act. It authorized the operation of the Yakima Nation childrens court, and to some extent there has been a re-emphasis of tribal

priorities. In other words the Yakima Tribe has done everything possible to assert jurisdiction under Title I, but we have had extensive problems and difficulties receiving grant funds under Title II. The problems and difficulties with receiving grant funds and the cost of the reassumption of jurisdiction will be discussed separately.

I. PROBLEMS AND DIFFICULTIES WITH RECEIVING GRANT FUNDS

The Yakima Tribe submitted an extensive, multi-agency grant proposal in December 1979. The failure of the Bureau of Indian Affairs to follow their regulations resulted in an appeal by the Yakima Tribe, which was successful.

(1) A letter from the Portland area office, dated June 13, 1980, transmitted to the Yakima Tribe the rating sheets with the comments by the review panel. We were appalled by the use of the criteria to evaluate our grant application. Under criteria I, child and family service programs may include but are not limited to eight program areas. We received a score of 5 out of 40 for this criteria. It is abundantly evident to the Yakima Tribe that under principles of self-determination, an Indian tribe could have submitted an application for one, all, or any combination of the eight service programs. Such an application would be evaluated on its merits and with knowledge of the tribe involved.

To give the Yakima Tribe a low score because we did not submit an application for all programs is unfair and does not take cognizance of the priorities established in our grant application. Further we petitioned for reassumption of jurisdiction (see table infra) and this petition contained a child welfare code for the Yakima Tribe. A review of the activities contained in our budget would have revealed that we had taken the initiative and were involved in several programs under criteria I. If anything the Yakima Tribe's petition and initiative should have enhanced our score because it would result in a comprehensive and integrated program for Yakima Indian children.

(2) Under criteria 2 there are eight factors to be considered in determining relative accessibility. We feel these factors are a barrier in themselves. Further, the bureau testified that the Indian Child Welfare Act was not needed because they were providing services for Indian children. Their assertion and the documentation therefor should be evidence sufficient to show the existence or nonexistence of these factors.

II. COST OF THE REASSUMPTION OF JURISDICTION

A. Yakima Indian Nation Children's Court budget for fiscal year 1979: $58,309.

As of June 18	April	May	June
Dependency hearing	26	19	19
Cases diverted	14	9	9
Adult summons issued	0	3	4
Total	40	31	32

The following statistics also relate to court activities (they do not reflect cases transferred from State court):

1. Open dependency files 165
2. Open adoption files 8
3. Open diversion files 18

B. Yakima Indian Nation Children's Court services: The salary for one children's court service officer is $15,347.

C. Yakima Indian Nation prosecutor services: Estimated cost, $30,000. One-half of the prosecutorial duties include Indian child welfare matters in tribal court and intervention in State courts for purposes of transfering cases to Yakima Indian Nation Children's Court.

YAKIMA INDIAN NATION

(Testimony prepared for oversight hearings on the Indian Child Welfare Act)

Good morning Mr. Chairman: My name is Patricia Marks of Karl Funke Associates, Inc. and I am here today representing the Yakima Indian Nation of

Washington State. In my capacity as a consultant to the Nation I have worked closely with the Yakima Nation's application for Indian Child Welfare moneys since mid January of this year.

The Yakima Nation's concerns regarding this program are many faceted, however, there are two essential concerns. First, the lack of coordination and communication between the BIA Central Office and the Portland Area Office with the Tribe. Second, the inadequacy of the amount appropriated to implement the Act.

LACK OF COMMUNICATION

The lack of coordination and communication between the BIA Central Office and the Portland Area Office with the Yakima Nation has been a year and a half ago when the BIA Portland Area Office arranged for a regional briefing on the proposed Public Law 93-608 regulations and solicitation of comments and failed to notify the Yakima Nation of said meeting. Yakima was later to learn that a number of other tribes in the Northwest received only 24 hour notice or, like Yakima, no notice at all of this important session.

Because of the Tribe's great concern over the issues of Indian Child Welfare the Tribe attempted to carefully follow the progress of the Indian Child Welfare Act and immediately after its signing began to make plans for implementation. The Yakima Nation was the first Public Law 83-280 tribe to submit its petition for retrocession of child welfare jurisdiction (petition filed November 13, 1980, approved January 11, 1980 effective March 28, 1980). Within the requirements of this petition the Tribe designed a workable system for dealing with child welfare problems including the development of an Indian Child court system, a children's code, a counseling system and a foster and adoption program. The Tribe indicated within its petition that it would be making a request for the funding of these programs under Title II of the Indian Child Welfare Act.

The Tribe's major problems began at this point. On December 12, 1979 the Yakima Nation received notice that proposals for funding under the Indian Child Welfare Act were being accepted. The BIA letter (Appendix I) indicated that all proposals for funding had to be received by the Portland Area Office on or before January 18, 1980, only 37 days later, and enclosed a grant application package.

This very short time frame, exasperated by the fact that the Christmas holidays fell right in the middle of this period, made it very difficult for most Tribes to prepare an adequate proposal on an entirely new program. This factor also made it virtually impossible to obtain adequate, if any, technical assistance from the Bureau. Given the totally inadequate funding level provided for implementation of the Act it is certainly reasonable to question the motivation of the Bureau in imposing such an unreasonable time frame.

Fortunately, the Yakima Nation was somewhat better prepared to develop their proposal than other tribes due to the extensive prior work required for submission of their petition for retrocession and their extreme interest in implementing their child welfare program.

Between December 12th and December 18th the Yakima Nation attempted to reformate their materials to comply with the format instructions and guidelines provided by the Agency Office. (These instructions were by the way, very vague in most respects). The Tribe was at that time under the understanding that because of the limited funding available under Title II of the Act, early submission of their proposal would increase their chances of obtaining adequate funds. The Agency Office had failed to inform the Tribes that moneys for Title II grants were not being distributed on a first come first serve basis.

Because of their concern to file their application early the Yakima Nation, on December 18th, submitted its proposal to the Agency Office who began an informal review of the proposal.

The Tribe's request was for a very comprehensive program. It requested the BIA to act as a lead agency for purposes of coordinating grants from the Department of Housing and Urban Development for child welfare construction costs, the BIA Division of Law Enforcement and the Law Enforcement Assistance Administration for legal moneys and court operation costs and the BIA Division of Social Services for ICWA and ongoing child welfare assistance moneys. This multifaceted proposal was developed based upon two concerns. First, the desire of the Yakima Nation to provide adequate services to all of their children and second, the Tribe's concern with fulfilling the overall requirements of their Public Law 83-280 retrocession petition.

On December 20, 1979, Chairman Johnson Meninick traveled to Washington D.C. to meet with BIA Central Office Director Ray Butler. At that meeting Mr. Butler did a brief review of the Tribe's grant application and indicated to the Tribe that the format for the application was correct.

It was immediately following this meeting that communication gaps between the BIA Central Office, the Portland Area Office, the Agency Office and the Tribe began to develop. For example, immediately upon Chairman Meninicks's return from the D.C. meeting he was informed that the BIA Agency Office staff had completed its initial review of the proposal and informed Tribal staff that due to the complexity of the grant application it would be better submitted in a Public Law 93-638 grant application format. Tribal staff had responded verbally by telling the Agency Office staff that Mr. Butler in the Central Office had reviewed the proposal and approved its present format.

This issue became even more complicated when on December 26th the Tribe received a copy of a memorandum from the Area Director to all Superintendents dated December 21st. This memo stated, "This letter serves as an addendum to our letter previously sent to you on December 12, 1979 (the original grant application instructions package given to the Tribe by the Superintendent) which explained the procedures that Indian Tribes and Tribal Organizations must do to apply for Public Law 95-608 grants." The memo further stated, "Agency review of these grant applications will be conducted in the same manner used in reviewing a Public Law 93-638 grant application. No application will be accepted from the Agency if this format is not used." (Appendix II)

Tribal staff taking heed of the verbal comments of Agency office staff and the December 21st memorandum began to re-write the application into a 638 grant application format while still questioning why Mr. Butler in the BIA Central Office had informed them that their grant application format was correct when the Area Office and agency Office were telling them something completely different.

To further complicate the situation a second letter was received by the Tribe on December 26th. This letter addressed to Chairman Meninick from the Agency Superintendent, Hiram Olney, informed the Tribe that their application for funds could not be approved as submitted. Mr. Olney's letter stated two reasons for this action. First, the application request exceeded the maximum of $15,000 permitted by the grant fund distribution formula and secondly, the original signed grant application had not been received. The letter however failed to mention the possibility that the application's format was incorrect. (Appendix III)

On December 28, 1979, Chairman Meninick sent a written response to Mr. Olney (Appendix IV). This response letter made two points: 1. The BIA's refusal to approve the application on the basis that it exceeded a $15,000 maximum is erroneous as the BIA regulations state that the "Base Amount" will be .2 percent of the total grant moneys or $15,000 whichever is greater. 2. The Tribe had submitted three copies of the grant application and they would be glad to provide the BIA with the original signed copy which was not forwarded by mistake. Chairman Meninick also pointed out that the Tribe had received no notification that the BIA was lacking the signed document and he felt that the BIA could have simply telephoned and requested this material rather than to have waited ten days to request it in writing, thus delaying the processing of the Tribe's application.

At this same time Tribal staff was placing a series of phone calls to the Area and Agency Office's of the Bureau in an attempt to clarify the all important issue of what format was to be used for the grant application. They were unsuccessful in obtaining a consensus of opinion.

On January 3, 1980 the Tribe received a response to Chairman Meninicks letter of December 28th. In this letter from the Area Director, the Tribe was informed that it was not the intent of the BIA Area Office to deny the Tribe's grant application but merely to fulfill the BIA's responsibility of doing an initial review of the grant application and provide the Tribe with comments on it. (Appendix V). This letter, however, still failed to clarify the question of what format the application was to be submitted in.

Finally, on January 18, 1980 (the final deadline for application) the Tribe, which had still not received clarification as to which grant application format it was to use, submitted the final application to the BIA Superintendent and the application was finalized. The Tribe had chosen to submit the application in the original 424 grant application format, as approved by Mr. Butler, however, by this time, sections of the proposal had been altered due to the attempted re-write and tribal

staff no longer had time to attempt to re-write sections of the proposal in a form that was acceptable to the Central, Area and Agency Office's of the Bureau.

On January 23, 1980, the Superintendent of the Yakima Agency sent a memorandum to the Portland Area Director indicating that they were forwarding the Yakima Nation's Indian Child Welfare grant application to them without recommendations. They stated the following reasons for making no recommendations: 1. the grant application was submitted as a multi-agency funded project which went beyond the formula share funding of the Indian Child Welfare Act, 2. The Tribe had informed the Superintendent's Office that they had conferred with the BIA Central Office and insisted that the application as prepared was to be processed at the Area and/or Central Office level, 3. The Agency's recommendations were disregarded by Tribal employees because the central office staff had assured them that the application as written would be processed even though, in the opinion of the agency office, it did not conform to the Indian Child Welfare Act criteria.

These statements again serve to point out the lack of communication and coordination between the Agency, Area and Central Offices of the BIA. The Agency Office and the Central Office were in disagreement as to whether the Tribe's application conformed to the Indian Child Welfare criteria, the Agency Office was unsure what its responsibility for making recommendations on the proposal was, and the Agency Office was under the belief that the Tribe's application went beyond the formula share funding of the Indian Child Welfare Act. (Appendix VI)

On February 21, 1980 the Portland Area Office sent a memorandum to Tribal Chairman Meninick, informing him that the Tribe's grant application had been conditionally approved and would be forwarded to the Central Office for funding. (Appendix VII) This correspondence included no information as to the score the Area Office had awarded the proposal and it included no copies of the comments made by the review team.

The Yakima Nation then felt comfortable that their proposal had been accepted and had been forwarded to the Central Office "for funding" distribution. The Tribe awaited notification as to the amount of funding it was to receive from the Central Office but no further correspondence was received.

On April 15, 1980, I attended a meeting at the BIA Central Office's Division of Social Services on an Indian Child Welfare Grant appeals hearing for another Tribe. After this meeting. I questioned Central Office staff as to the status of the Yakima Tribe's application and was informed that the Yakima Nation's request for funding had been denied. I immediately called the Tribe and was informed that the Tribe had received no written notification of this decision from the Agency, Area or Central Office of the BIA.

On April 22, 1980 the Tribe forwarded a telegram to BIA Commissioner William Hallet, informing him of the denial rumor the Tribe had received and asking for an official clarification of the situation. The Tribe further stated that if the application was in fact denied the telegram was then to serve as an official notice of appeal, based upon the fact that the Tribe had not received a written notification as required in the regulations. (Appendix VIII)

On April 25, 1980, Chairman Meninick flew to Washington, D.C. and met with Mr. Ray Butler, Director of the Division of Social Services. Mr. John Saxon of the Office of the Solicitor (Department of Interior) and myself. At this time the Tribe pointed out that they had received no communications from the Agency, Area or Central Office regarding the denial of their application either written or oral. They stated that their last communication had been the February 21, 1980 letter from the Portland Area Director informing the Tribe that their grant application had been conditionally approved and would be forwarded to the Central Office for funding (Appendix VII)

Mr. Butler and Mr. Saxon read the February 21st letter and both agreed that this letter of approval and transmittal serves as a formal notice of the BIA Area Office's acceptance of the proposal and as such the Tribe was entitled to, at the very least, the same $15,000 base funding as the other Tribes and Organizations whose applications had been accepted were receiving.

Mr. Butler then informed that Tribe that they would be receiving this base amount plus a percentage of moneys based on their service population and that they would be notified as to the total grant award in writing in the near future. Mr. Meninick also asked Mr. Butler for a written confirmation of the meeting and the agreements made and Mr. Butler agreed to provide it. No correspondence of this nature has been received as of today.

The Yakima Nation's representatives left Mr. Butler's office pleased with the decisions reached by the Department and again awaited notification from the BIA as to the amount of funding they were to receive. Again, no written notification was received.

Finally on June 13, 1980 the Tribe received a letter from the Portland Area Director informing them that their grant application under Title II of the Indian Child Welfare Act was not approved because of the Tribe's low score. (Appendix IX)

There are two entirely different conclusions which can be drawn from the June 13th letter. One, the Central Office had failed to inform the Area Office of the decision on the Tribe's appeal by the Solicitor's Office. Or second, the Area Office has taken it upon itself to ignore the appeals decision.

At this time, the Yakima Nation is attempting to obtain clarification from the BIA as to the status of their grant application. They are planning to file another appeal in a few days, which will undoubtably lead to another meeting with the Central Office.

The Tribe has already spent a considerable amount of money to fly Chairman Meninick from Washington State for one meeting with Mr. Butler and Mr. Saxon. A meeting which the Solicitor's Office representative later ruled to be unnecessary as the Tribe's application had already been accepted and a meeting during which the tribe and the BIA Central Office had reached a mutually agreed upon solution to the problem of the Tribe's grant application. The Tribe feels that it is both unreasonable and unnecessary for them to continue going through this same procedure and they ask the Committee's assistance in clarifying the situation.

In short, the points we are making are simple. For reasons unknown to us, the BIA Central Office, Area Office and Agency Office appear to be approaching this funding and application criteria from two completely different positions and the Tribe is caught in the middle, attempting to determine who in fact has the authority to make funding decisions. These offices have not been in agreement as to what form the application should be submitted . . ., what criteria should be used for evaluating a proposal and whether the BIA Central Office's appeals hearing rendered a decision which was official.

This lack of coordination has placed the Yakima Nation in a critical situation. The Tribe has been forced to spend staff time re-writing its proposal in both a 424 and 638 format only days before the deadline and received a low score partially resultant from not having enough time or adequate technical assistance. They have been forced to fly Tribal Chairman Meninick to Washington, D.C. for an appeals hearing that the Solicitor's Office subsequently ruled was unnecessary and they are now in a position of not knowing whether they need to file a second appeal of the BIA decision, and if so to whom, the Commissioner, the Area Director or the Agency Superintendent.

The Tribe stresses that something must be done to alleviate this present situation and to prevent it from occuring in the future. The Tribe also stresses that an investigation should be conducted to determine how many other Tribe's have had similar problems.

RECOMMENDATIONS

1. We stress that all Indian Tribes and Organizations must be given adequate notice of application deadlines.

2. We recommend that this Committee require the BIA to provide all Indian Tribes and Tribal Organizations with accurate information on proposal development including such things as:

A. A detailed description of the format to be used in writing a proposal.

B. A detailed description of which service population figures will be accepted.

C. Copies of all relevant guidelines and administrative policy statements related to the application, technical assistance and appeals process.

D. A detailed statement on how proposals will be reviewed and scored including a statement of any funding priorities established by the agency.

E. Clarification on Joint Funding Feasibility. –In developing a request for Public Law 83-280 Child Welfare retrocession, Tribes are required to present a total plan for the delivery of child welfare services. Included in this plan are such things as the development of a children's court, the development of a children's code and a statement of various services to be provided. In many cases these projects require funding from sources other than Title II of the Indian Child Welfare Act. Presently, it is unclear as to whether Tribes should include these funding needs in their ICWA proposal.

This becomes increasingly more complicated when project funding needs overlap. For example, the Yakima Nation has the need for a group home project. This requires construction funding from either the BIA Housing Improvement program and/or the Department of Housing and Urban Development. HUD is telling the Tribe that they can not approve the application for construction moneys until operations money is available and the BIA is saying that it can not guarantee operations moneys until a facility is available.

This therefore requires that the BIA must work closely with other agencies in obtaining these types of joint funding arrangements.

3. We recommend increased Training for both BIA and Indian Tribal and Organization staffs;

I believe that the Yakima Nation's testimony clearly points out the types of problems that are being encountered as a result of Tribes and BIA staff being uninformed on how proposals are to be developed, scored and appealed. We stress the need for the development of a uniform application, review, scoring and notification procedure and the training of personnel on how this system is to work.

4. We stress that the BIA must provide Tribes and Organizations with the names, addresses and telephone numbers of persons trained to provide training and technical assistance on this new program.

5. We recommend that because of the obvious lack of uniformity in the review and scoring of proposals in this funding cycle that all proposals be submitted directly to the Central Office for review and scoring.

6. We recommend the use of Indian proposal reading teams who could be brought to the Central Office and trained to score all Tribal and Indian Organizational proposals:

We feel that this would serve two purposes: 1. It would allow for uniform review of all proposals.

It would allow the BIA to view funding needs on a nationwide rather than an area by area basis.

7. Because this is a new program, we stress that Indian Tribes and Organizations should be sent copies of the comments and scores received on their proposal. This information will allow Tribes and Organizations to view how their proposal was received and adjust future requests for funding accordingly.

8. We recommend that a new formula be developed for distribution of moneys:

This new formula should be designed in such a way that it reflects not only service population but also current circumstances of the Tribe or Organization. For example: its present personnel capabilities, the level of development of its children's court system, its available facilities, etc.

INADEQUACY OF FUNDING

The Yakima Nation sincerely believes that the amount of money appropriated to implement the Indian Child Welfare Act is totally inadequate.

In examining this question of inadequate funding some very critical points must be considered.

First, at the time the Indian Child Welfare bill was being considered by this Committee, the BIA Social Services staff provided this Committee with an estimate of the number of Tribes and Indian Organizations who would be expected to request funding under Title II of the bill. The BIA staff stated that it expected that no more than 125–150 applications would be received. They further stated that in their opinion the majority of these grants would be for needs assessment studies and startup moneys and therefore the first one or two years would have only limited requests.

At that time, I questioned Mr. Butler and other BIA staff as to the accuracy of these statements based upon two points: 1. Over 200 Indian Tribes and Organizations had testified or written expressing their desperate need for this type of funding and 2. The Committee had been informed that at least ten (10) Indian Child Welfare projects were being funded by the Department of HEW as demonstration programs. The DHEW funding for these 10 programs was scheduled to run out in fiscal year 1980–81 and under HEW regulations these projects could not be granted ongoing operations funding. The estimated HEW expenditure for these currently existing programs was well over $3 million and HEW had made it clear that they were advising these Tribes to contact the BIA Social Services Department for future funding.

The BIA Central Office has recently informed me that over 250 requests for funding were received (100 more than they had estimated) in the first funding

cycle. These 250 plus grant applications combined resulted in a total request of approximately $20 million.

The BIA approved 157 of these requests and they alone combined to a total request of over $12 million ($6.6 million more than the BIA had to work with).

It is our feeling that had the BIA provided adequate technical assistance and adequate notice to Tribes and Organizations, the number of approved applications would have been closer to 250.

It is obvious from examining these figures that the $54 million dollars appropriated and the $9.2 million which is requested for fiscal year 1981 are simply not enough. We have been informed by the BIA that larger tribes are receiving only around $40,000 to run a twelve month program and many smaller tribes are receiving closer to $18,000-20,000. These moneys do not even allow the Tribe's to hire a Social worker and provide that individual with transportation costs and office supplies.

Tribes like Yakima, who have petitioned and/or received Public Law 83-280 retrocession in the Indian Child Welfare Area are faced with even more financial problems as they are also forced to develop their court systems, children's codes and law enforcement programs with this same amount of money.

The Yakima Nation is seriously concerned that the present formula for distribution of funds is simply not working. They feel that the $15,000 base plus an added amount based upon the service population does not adequately reflect the actual needs of the Tribes and organizations involved. We encourage the development of a formula which takes into account the present circumstances of each Tribe and Organization. For example, we feel funding allocation decisions should examine a Tribe's present staff capabilities, the status and need of its children's court system, the size of its geographic area and the accuracy of its service population figures.

RECOMMENDATIONS

1. We recommend that this Committee request from the BIA an Indian Child Welfare Needs Assessment paper based upon the ICWA grant applications received.

   A. We request that this paper break out such information as the number of Tribes and Organizations requesting construction moneys and the totals of those requests and the number of requests for matching fund to Title XX or other HEW programs. We also request that the Committee obtain a statement comparing the Tribe's request for matching funds to the actual amount awarded.

   It is my sincere feeling that matching programs may be a workable method of allowing Tribes and Organizations to obtain substantially more money for operation of child welfare programs without having to wait for a huge increase in ICWA Title II funding.

2. We recommend that the BIA be encouraged to explore such options as budgeting increased moneys for child welfare related programs for example, adding moneys to the court operations programs to allow for the development of Indian children's courts (particularly in Public Law 83-280 states) and adding moneys to facilities construction programs for such projects as the building of group homes and holding centers.

3. Require that the BIA budget for and provide adequate technical assistance and training programs for both BIA and Tribal staff.

4. Encourage the BIA to become actively involved in joint agency funding efforts for Indian Child Welfare programs.

5. Provide copies of the BIA report to the House Interior and Insular Affairs Committees and the Senate and House Appropriations Committees.

On behalf of the Yakima Nation I would like to thank you for this opportunity to present testimony and indicate our willingness to work with this Committee and the BIA to alleviate these problems.

50-083 O - 80 - 6

Appendix I

IN REPLY REFER TO:
Social Services

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
PORTLAND AREA OFFICE
POST OFFICE BOX 3785
PORTLAND, OREGON 97208

URGENT

DEC 12 1979

Memorandum

To: Superintendent, Colville Agency
Fort Hall Agency
Northern Idaho Agency
Spokane Agency
Umatilla Agency
Warm Springs Agency
Olympic Peninsula Agency
Puget Sound Agency
Yakima Agency
Siletz Agency
Attention: Social Services

From: Office of the Area Director

Subject: Public Law 95-608 Indian Child Welfare Act Title II Grant Funds

We are enclosing a sample application kit for your distribution to tribes and Indian organizations in your area who want to apply for Public Law 95-608 Indian Child Welfare Act Title II Grant funds.

The deadline for acceptance of application is 4:15 P.M. on January 18, 1980. Detailed explanation is included in application process.

Agency Social Workers at all agencies will review grant applications for their areas of jurisdiction, including urban Indian organizations and will approve or disapprove the application. Siletz, Spokane, Warm Springs Agencies will forward their grant applications directly upon receipt to Portland Area Office because they do not have Bureau Social Workers. They have a maximum of 30 days for this process. Except for those applications received on or after January 14, the agencies will have 15 days for their review.

Approved applications only will be forwarded to Portland Area Office, Branch of Social Services. The Area Office Review Committee will have a maximum of 30 days to review and forward approved grants to Control Office for funding. All applications must be received on or before 4:15 P.M., February 29, 1980, in the Department of Interior Mailroom in Washington, D.C.

Applicants should be notified of awards no later than April 15. Each agency was notified by phone to alert tribes and Indian organizations of the availability of the grant funds on December 3, 1979.

Please complete the section under closing date for receipt of applications for person to receive the applications, agency name and address and agency work hours.

At the meeting in Seattle, December 18 and 19, Louise Zohkan, Central Office, and Portland and Juneau Area staff will be prepared to answer questions in regard to the Indian Child Welfare Act.

The Portland Area Contracting Office will be sending to each agency directions to be shared with tribes regarding accounting procedures that might be adopted in order that tribal indirect cost rates will not be adversely affected. There is no indirect costs allowed in these grant applications.

Area Director

Enclosures

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
PORTLAND AREA OFFICE
POST OFFICE BOX 3785
PORTLAND, OREGON 97208

DEC 21 1979

Memorandum

To: All Superintendents, School Superintendent, Project Engineer, Assistant Area Directors's and Area Branch Chiefs

From: Area Director

Subject: Indian Child Welfare Act (P.L. 95-608)

This letter serves as an addendum to our letter previously sent to you on 12/12/79 which explained the procedures that Indian Tribes and Tribal Organizations must do to apply for a P.L. 95-608 Grant.

1. All Grant applications received from tribal organizations should be submitted to the applicable agency via certified mail. Grant applications submitted by the agency to the Area Branch of Social Services shall always be sent certified mail.

2. All Grant applications received by an Agency will be forwarded to the Area Office with a recommendation to either approve or disapprove. The only exception to these reviews will be when an application is received from an organization other than a Federally recognized Indian Tribe.

3. Agency review of these Grant Applications will be conducted in the same manner used in reviewing a P.L. 93-638 Grant Application. No applications will be accepted from the Agency if this format is not used.

4. The Bureau will only accept Grant Applications when it is on or near a reservation from the tribal governing body. All off reservation Grant Applications will be submitted directly to the Area Branch of Social Services with no recommendation by the Agency.

5. For those Grant Applications received by the Agency from Tribal Governing bodies, the forms and format used will be the same as if they were applying for a P.L. 93-638 grant i.e. NEEDS, GOALS AND OBJECTIVES, APPROACH, BENEFITS DERIVED AND BUDGET. These applications must always be accompanied by a Resolution.

If you have any questions regarding this memorandum or require clarification on any aspect of the Indian Child Welfare Act, please direct them to the Area Branch of Social Services.

Area Director

Social
Services

Yakima Agency
P. O. Box 632
Toppenish, Washington 98948

DEC 26 1979

Mr. Johnson Meninick, Chairman
Yakima Tribal Council
Post Office Box 151
Toppenish, Washington 98948

Dear Mr. Meninick:

This is to let you know that your application for Title II grant funds under Public Law 95-608, Indian Child Welfare Act, can not be approved as submitted.

The reasons are (1) that the application request exceeds the maximum of $15,000.00 permitted by the grant fund distribution formula and (2) the original signed application has not been received.

(Sdg.) MIRIAM E. OLNEY

Superintendent

cc: Branch/Chrono
Reading File
JS:SLW:12-26-79

cc: George W. Colby, Prosecutor
John Mesplie, L & J Division
Phil LaCourse, Admin. Asst.
Delano Saluskin, Admin. Dir.
kmb/1-24-80

CONFEDERATED TRIBES AND BANDS
Yakima Indian Nation

December 28, 1979

Mr. Hiram Olney
Superintendent
Yakima Indian Agency
P. O. Box 632
Toppenish, Washington 98948

RE: Grant Application - Indian Child Welfare Act

Dear Mr. Olney:

Today we received your letter dated December 26, 1979, in which you denied our grant application for federal funding pursuant to PL 95-608, Indian Child Welfare Act. Frankly, we cannot understand your reasons for not approving our application. Acceptance or rejection of applications is to be at the Area Office level, and therefore your office does not have the specific authority to deny our application. This fact we have confirmed with Mr. Vincent Little, Area Director, Portland Area Office, as of today's date.

When we reviewed your reasons for denial it is obvious that your office does not clearly understand the funding guidelines and regulations and furthermore that your staff creates impediments which might delay our eligibility for the grant funds. There is clearly no maximum of $15,000 per grant, in fact the language of the regulations state that the "base amount" will be ".2% of the total grant money or $15,000 whichever is greater."

Your second reason for denial was the fact that you had not received an original signed application. On December 18, 1979, our office provided you with three (3) copies of our grant application for your review. It appears to us that a simple request for the original signed application, at that time, would have been in order rather than allowing ten (10) days to elapse and now using it for a weak reason for denying our application. Your staff is permitted fifteen (15) days to review the application and it is our position that you technically received our grant application on December 13, 1979 rather than December 28, 1979, as indicated by your staff.

As you know, the "original packet for grant applicants" directed us to submit a 424 grant contract--which we did. Now, we are being told by your staff that it is to be submitted as a 638 contract package. The Central Office and Area Office have informed us that our submission in the present format is correct.

As Chairman of the Yakima Tribal Council, I feel that we have in good faith complied in all aspects of the grant application process. In addition, I respectfully request that you forward our Grant Application to the Area Office for their review. It is our hope that you will become an advocate for our tribe in helping us meet the critical needs of our tribal members.

Thank you for your cooperation in this matter.

Sincerely yours,

Johnson W. Meninick, Chairman,
Yakima Tribal Council.

cc: Area Director
C. McCormack
Division Administrator, Law and Justice
Ph rose, Div. Administrator, Grants & Contracts
Ir istration

PAL:jl

cc: George W. Colby, Prosecutor
Gillespie, L & J Division
Phil LaCourse, Admin. Asst.
Delano Saluskin, Admin. Dir.
kmb/1-24-80

V

Yakima Indian Agency
P.O. Box 632
Toppenish, WA 98948

January 3, 1980

Mr. Johnson Meninick
Chairman, Yakima Tribal Council
Yakima Agency
Toppenish, WA 98948

Dear Mr. Meninick:

There is apparently misunderstanding concerning my letter of December 26, 1979 about the grant application we received December 18th for the Indian Child Welfare Act.

I want to clarify that we did not intend to deny the application, but merely to fulfill our responsibility of doing the initial review of the application. Our 30 day review is to ensure that the application meets the intent of the act; that the criteria requested by Central Office is contained in the application, and that the proposed cost is considered reasonable. This review is required by regulation before I can recommend approval or disapproval of the application.

The basic concern we have with the existing application is not with the overall concept but with the fact that the scope and proposed cost is in excess of the specified formula. Bringing this to your attention was to allow for reconsideration of the grant application content. In doing so, we had anticipated further opportunity to work with you in developing the application. The base amount available for distribution is $4,800,000. The formula share does specify .2% of that amount or $15,000. whichever is greater. In computing these factors $15,000 is the maximum for the initial application. Further distribution of any remaining balance of the $4.8 million follows the percentile distribution described on page 69732 of Federal Register Vol. 44 No. 234 dated December 4, 1979.

This application was discussed in a meeting between Jessie Snider, Social Worker, whom I asked to advise you on this matter, and representatives of the Tribe. Mrs. Snider did explain and even provided to your staff the published guidelines and directives which we received from our Area and Central Offices. As a result of that meeting and previous contacts we understand the grant application we have, not only represents a request for the Indian Child Welfare Act funding, but serves as a complete package for possibly obtaining other funding through LEAA and HUD.

VII

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
YAKIMA AGENCY
P. O. BOX 632
TOPPENISH, WA 98948

Reservation Programs

JAN 23 1980

Memorandum

To: Area Director, Portland

From: Superintendent, Yakima Agency

Subject: Indian Child Welfare Act (P.L. 95-608)
Grant Application - Yakima Indian Nation

Pursuant to grant application processing procedures and guidelines, we are forwarding herewith the original and two copies of the Yakima Indian Nation's grant application for consideration for funding under the Indian Child Welfare Act.

The application, as presented, constitutes a multi-agency funded project which requests Bureau assistance, as lead agency, to process the grant application under the Joint Funding Simplification Act. Assistance and prompt response from the Area and Central Offices will be necessary to properly inform the applicant with respect to any special problems or impediments that may affect the feasibility of Federal grant assistance on a joint basis.

Although we are in agreement with the basic concept of the Yakima Indian Nation's proposal to exercise jurisdiction over Indian domestic relations and child welfare matters, the grant application is forwarded without recommendation for the following reasons:

(1) The grant application is submitted as a multi-agency funded project which goes beyond the formula share funding of the Indian Child Welfare Act;

(2) Tribal government representatives responsible for development of this grant application have conferred with Bureau officials in the Central Office and insist the application as prepared and submitted to the Superintendent be processed at the Area and/or Central Office level.

(3) Our recommendations and offer to assist in preparation of the final grant application were disregarded by tribal employees because of assurances by Central Office staff that the application would be processed even though it does not conform to Indian Child Welfare Act criteria.

Copies of correspondence between the Yakima Tribe and this office concerning initial application receipt and review are provided for your information.

It is recommended the Yakima Indian Nation be considered for a proportionately equitable share of Indian Child Welfare Act grant funds for establishment and operation of Indian child and family service programs.

Superintendent

Enclosures

cc: George W. Colby, Prosecutor
John Mesplie, L & J Division
Phil LaCourse, Admin. Asst.
Delano Saluskin, Admin. Director
kmb/1-24-80

Social Services
Yakima
802-01
P.L. 95-608 Grant

February 21, 1980

Memorandum

To: Chairman, Yakima Tribal Council

Through: Superintendent, Yakima Agency

From: Office of the Area Director

Subject: P. L. 95-608 Grant Application

Your grant application has been reviewed by the Area Office Review Panel. The following are concerns expressed by the panel:

1. Your grant application as submitted far exceeds the formula share funding of the Indian Child Welfare Act.

2. Your grant proposal falls short of complying with criteria of the Indian Child Welfare Act in several areas.

We are conditionally approving your grant application and will forward it to our Central Office for funding. As soon as we are notified as to the amount of funds available for your program, we will contact you so your budget and proposal can be amended accordingly. All approval of grants are contingent on the availability of funds.

If you have any questions, please contact Nelsen M. Witt, Area Social Worker.

[Sgd] Vincent Little

Area Director

cc: Superintendent, Yakima Agency

NMWITT/lf 2/21/80

Bcc: Surname
chrony
Mailroom

Memo from Yakima 4/23/80 10:04 AM

YAKIMA INDIAN NATION J PINKHAM
PO BOX 151
TOPPENISH WA 98948

4-035B175113 04/22/80 ICS IPMMTZZ CSP WSMB
5098655121 MGM TDHT TOPPENISH WA 173 04-22 0158P EST

FUNKE AND ASSOCIATES INC
729 SECOND ST NORTHWEST
WASHINGTON DC 20002

THIS IS IN REGARD TO OUR INDIAN CHILD WELFARE GRANT APPLICATION THAT WE UNDERSTAND HAS BEEN DENIED FUNDING DUE TO LOW RATING UNKNOWN TO US UNTIL RECENTLY AT THE AREA OFFICE. IF THIS IS TRUE THROUGH THIS TELEGRAM WE HEREBY SERVE NOTICE OF APPEAL PURSUANT TO 25 CFR 2 OF THE BUREAUS DECISION. ADDITIONAL INFORMATION WILL BE FORWARDED TO YOU UPON RECEIPT OF REQUEST FROM YOU. FUNKE AND ASSOCIATES INC, WASHINGTON DC WILL BE OUR INITIAL REPRESENTATIVE BETWEEN THE BUREAU AND THIS TRIBE TO FACILITATE ON APPEAL.

WE ARE GRIEVED THAT THE ONLY TRIBE IN AMERICA THAT HAS RECEIVED EXCLUSIVE JURISDICTION UNDER THE ACT HAS BEEN DENIED FUNDING, THE AREA OFFICE DID NOT NOTIFY THIS TRIBE OF ANY GRANT DEFICIENCY EXCEPT AS FOR DOLLAR AMOUNT, WHICH COULD ONLY BE DETERMINED AFTER ALL THE GRANTS WERE SUBMITTED TO THE CENTRAL OFFICE.

IF OUR GRANT HAS NOT BEEN DENIED WE REQUEST NOTIFICATION OF ITS CURRENT STATUS. THANK YOU.
JOHNSON MENINICK CHAIRMAN YAKIMA TRIBAL COUNCIL

1410I EST

MGMCOMP MGM

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
PORTLAND AREA OFFICE
POST OFFICE BOX 3785
PORTLAND, OREGON 97208

IN REPLY REFER TO:
Social Services
Yakima
802-01
ICWA Grant

Through: Superintendent, Yakima Agency

JUN 13 1980

Mr. Johnson Meninick, Chairman
Yakima Tribe
P. O. Box 632
Toppenish, WA 98948

Dear Mr. Meninick:

We regret to inform you that your grant application under Title II of the Indian Child Welfare Act was not approved for funding. The number of applications far exceeded the funds available for programs under the Indian Child Welfare Act. Funds were received only for those proposals which were rated 70 or higher by the review panel. Your proposal rating was 58. Attached are the rating sheets with comments by the review panel. This is the basis in which the rating was determined and copies were included in the application package sent to you.

This does not preclude you from submitting an application during subsequent grant application periods. If you have any questions and we can be of assistance, please contact Nelsen N. Witt, Area Social Worker, Telephone 503-231-6783.

You do have a right to appeal this decision. See 25 CFR, Subpart F for further information. (Copy Attached)

Sincerely yours,

Vincent Lucas

Area Director

Enclosures

Senator MELCHER. The committee will now recess in order to take up the markup of three bills.

I would ask the remaining witnesses to please be patient with us. As soon as we are through with the markup we will return immediately to the hearing and complete the hearing. The public, of course, is invited and solicited to attend our markups. We are pleased to have you here during that period.

[Recess taken.]

Senator MELCHER. We will now return to the hearing.

Our next witness is Rudy Buckman, tribal administrator, Fort Belknap Indian Community Council, Harlem, Mont.

Rudy, please proceed.

STATEMENT OF RUDY BUCKMAN, TRIBAL ADMINISTRATOR, FORT BELKNAP INDIAN COMMUNITY COUNCIL, HARLEM, MONT.

Mr. BUCKMAN. The Fort Belknap Indian Community is pleased to have the opportunity to be here at these oversight hearings.

Rather than read my statement, I would like to just submit it for the record because most of the problems that have come out regarding funding, regarding compacts between States, and adequate identifying of programs to implement the act have already been mentioned, but there is no solution.

Senator MELCHER. Without objection, it will be included in the record at the end of your testimony.

Mr. BUCKMAN. I would like to recommend that the Congress and the Bureau of Indian Affairs consider the refunding of the ongoing child welfare program. I feel that this is a program that is instrumental in implementing the act.

For example, on Fort Belknap we have an ongoing child welfare program that does the following things. At the present time, we have 110 children who are being sponsored by the Christian Children's Fund which is administered by the ongoing child welfare program, and this program is responsible for the licensing of Indian foster parents; it is doing research on the Assiniboine and Gros Ventre tribal standards for Indian foster care; it is conducting a feasibility study for a group home which we should have opening in August of this year; and it is also studying the possibility of licensing the Fort Belknap Reservation for adoption of standards within the State. It is studying the possibility of licensing of the Fort Belknap Reservation for fostercare licensing, and it is also training Indian foster parents in fostercare.

I believe these functions would take priority before we could even begin to implement the act. These things must be done.

With the funding being eliminated on September 30, 1980, I do not see how it can be possible in light of the fact that the Fort Belknap Indian Community Council only received $16,903 under the Indian Child Welfare Act.

I thank you. If there are any questions, I would be happy to answer them.

Senator MELCHER. Thank you very much, Rudy, for your entire statement.

What is the current cost of the contractual services?

Mr. BUCKMAN. For the ongoing child welfare program?

Senator MELCHER. Yes.

Mr. BUCKMAN. $40,030.

We have two staff people and approximately one-eighth of the budget goes to juvenile prevention activities. About $1,500 goes to the tribal courts.

Senator MELCHER. Obviously, with only $10,000 through the grant——

Mr. BUCKMAN. We have only $10,000 to carry on the program.

Senator MELCHER. And it is a $40,000 program?

Mr. BUCKMAN. Yes, sir. I do not see how we are even going to begin to implement the act without adequate funding.

Senator MELCHER. I do not either. It is very pertinent that we are able to provide adequate funding so we can have the act implemented.

Thank you very much, Rudy.

Mr. BUCKMAN. Thank you.

[The prepared statement follows. Testimony resumes on p. 117.]

PREPARED STATEMENT OF RUDY BUCKMAN, FORT BELKNAP INDIAN COMMUNITY COUNCIL

The Fort Belknap Indian Community is pleased to have this opportunity to testify on the oversight hearings on problems encountered in implementing the Indian Child Welfare Act of 1978.

The basic purpose of the Act is to protect Indian children from arbitrary removal from their homes and families. Indian children are the most important asset to the future of Indian stability. The Indian Child Welfare Act recognizes tribal sovereignty by recognizing Tribal Courts as forums for the determination of Indian child custody proceedings.

Furthermore, the Act will further strengthen the integrity of the Indian extended family custom by eliminating certain child welfare practices which cause immediate and unwarranted Indian parent-child separations, and ameliorating of any discriminatory practices which have prevented Indian parents from qualifying as adoptive family or foster parents. The Act requires federal and state governments to respect the rights and traditional strengths of Indian children, families and tribes.

It appears to be the feeling of many state and local governments that the Child Welfare Act is applicable only to tribal governments and not to themselves. It must be emphasized that the Indian Child Welfare Act does not place any restrictions upon a Tribal Government to enact legislation in Indian child welfare matters, but places those restrictions and obligations contained in the Act upon the states.

Although the Act is important, it does have several problems which must be addressed in order to adequately implement the Congressional policy contained in 25 U.S.C. § 1912. The following are some of the concerns which must be addressed in order to protect our Indian children:

1. FUNDING APPROPRIATIONS AND ALLOCATIONS

Congress must appropriate more money than it has to implement the Act. Nationwide during fiscal year 1980 funding requests approved amounted to $11,631,121. Urban organizations received forty three (43) grants or twenty six percent (26%) of the total and rural or reservations received one-hundred and twenty-two (122) grants or seventy-four percent (74%) of the total. Eighty five (85) grant applications were not funded. Those tribes funded were not appropriated adequate funds to prepare their judicial and administrative capabilities to handle the increased case load which the Indian Child Welfare Act has stimulated.

Presently, there is no department or agency at Fort Belknap which is equipped to handle the cases referred of Tribal Court by states and other administrative agencies. Certainly with the $16,903 dollars allocated in FY 1980 not much progress can be made. With three times as many cases and no additional staff or

financial resources it is difficult to devote adequate time to adjudicate, place and follow up on individual clients.

The Act has also increased the case load of our Tribal Court at a time when our court system is facing extreme financial constraints. The case load at Fort Belknap Tribal Court, in child custody matters has increased by 300% since the passage of the Indian Child Welfare Act. These cases are referred to our court not only from the State of Montana but have come from the states of Washington, Utah, Idaho, Iowa, Illinois, Minnesota and Virginia. There appears to be no end in sight and that additional funding for the court system is necessary in order to fully resolve child custody cases. The Tribal Government of the Fort Belknap Indian Community realize the importance and significance of the Act and have taken appropriate steps such as redrafting their Children's Code, designated the On Going Child Welfare office to handle referrals from the state and have attempted to seek out funding to further strengthen our child welfare program.

2. STATE INVOLVEMENT

The Fort Belknap Indian Community has had numerous meeting's with the Social and Rehabilitative Services of the State of Montana to discuss the state's position concerning the implementation of the Indian Child Welfare Act. It appears that we have had little success because the state wants little to do with Indian children after the passage of the Act. The state appears reluctant to pay for foster care or provide services after a child has been referred to Indian Court. As we indicated earlier the state is eager to transfer cases to our tribe's jurisdiction but little or nothing is done after that. The basic problem seems to be the lack of services. These include the certification of foster homes, foster parents and payment for temporary shelter. For example, Fort Belknap has received funding and is completing a Group Home facility which will be able to shelter twenty-two (22) youths in need of care and houseparents. If the home is not certified by the state no payment can be made for clients placed there by the Fort Belknap Court. Even homes that are certified as foster home shelter units are having problems receiving foster care payment from the state.

3. B.I.A. INVOLVEMENT

The Bureau of Indian Affairs does not have the organization or funding to assist the Tribes or perform the necessary functions as required under the Indian Child Welfare Act. As we indicated earlier the Tribal Government of the Fort Belknap Indian Community submitted a proposal for Indian Child Welfare Act funds and were told that the funds would be competitive based upon the proposals submitted by the Tribes. However, the funds were not distributed upon a competitive basis but were allocated to be pro-rated out to the Tribes. We received $16,903. The proposal submitted to the Bureau by the Fort Belknap Indian Community received the highest grading in the Billings Area but got less than ⅓ of their request which will jeopardize the progress made in the area of child welfare. Furthermore, these funds are to be utilized before the end of fiscal 1980 and then grant application for fiscal 1981 are to be submitted by December 31 of 1980 but the funds for fiscal 1980 will not be activated until April 1, 1981 which leaves approximately a six-month gap in the funding period which will have a detrimental effect upon the continuity and progress which the Tribes have obtained up to that point.

4. Other Tribes Involvement

The Tribal judicial system and the child welfare program of the Fort Belknap Indian Community have had cases which have involved other tribes within and without the state of Montana. There seems to be a further need for clarification and understanding of the Act in order to resolve jurisdictional disputes which may arise. We have not encountered any disputes which we have not been able to resolve on an amicable basis but there is room for serious problems that must be addressed before they reach proportions that require litigation.

These are only a few of the major areas which concern the Tribal Government of the Fort Belknap Indian Community. We are pleased with the passage of the Indian Child Welfare Act and feel that it is a step in the right direction in re-affirming and re-emphasizing tribal sovereignty and self-government of Indian Tribes. We are attaching some documents and correspondence which pertain to the Act and our concerns with funding allocations. Thank you.

Fort Belknap Community Council

(406) 353-2205
P.O. Box 249
Fort Belknap Agency
Harlem, Montana 59526

June 19, 1980
DATE

John Melcher, Senator
United States Senate
6313 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Melcher:

Enclosed please find a copy of a letter I recently sent to the American Indian Lawyer Training Program, Inc, expressing my concern and disappointment in the manner in which the Bureau of Indian Affairs allocated the funds to implement the Indian Child Welfare Act.

As Chairman of the Senate Select Committee on Indian Affairs you have probably already heard some concern expressed regarding the administration of funds allocated to implement the Act. We realize that there can be no action which will satisfy all tribes, but to purposely mislead tribes by saying monies would be competitive and then given pro rata does not make sense. I believe I once wrote you that this type of funding formula merely maintains the status quo of tribes in relation to each other. It soon leads to low morale and motivation among tribal leaders in various stages of development. For example, some do not need as much economic development aid or technical assistance as others. Another tribe might need more social development program monies. In otherwords tribal priorities must be viewed as guidelines for the Bureau of Indian Affairs to follow.

Sincerely Yours,

Charles "Jack" Plumage, President
Fort Belknap Community Council

Fort Belknap Community Council

(406) 353 2304
P.O. Box 318
Fort Belknap Agency
Harlem, Montana 59526

June 10, 1980
Date

American Indian Lawyer Training Program, Inc.
1step MacArthur Blvd.
Oakland, California 94619

Dear Sirs:

We would like to express some of our concerns regarding the Indian Child Welfare Act of 1978 (P.L. 95-608) and the Bureau of Indian Affairs inept and incompetent attempts to implement the law.

In a news release of the Department of Interior on July 27, 1979 the basic purpose of the Act was to restrict the placement of Indian children by non-Indian social agencies in non-Indian homes and environments.

> "The policy of the Act and of these regulations is to protect Indian children from arbitrary removal from their families and tribal affiliations by establishing procedures to insure that measures to prevent the breakup of Indian families are followed in child custody proceedings. This will insure protection of the best interests of Indian children and Indian families by providing assistance and funding to Indian tribes and Indian organizations in the operation of child and family service programs which reflect the unique values of Indian culture and promote the stability and security of Indian families. In administering the grant authority for Indian Child and Family Programs it shall be Bureau policy to emphasize the design and funding of programs to promote the stability of Indian families."

Please note that responsibility for "design and funding" was placed within the Bureau of Indian Affairs. In FY 1980 the Bureau of Indian Affairs received 250 grant applications requesting a total of $20,180,530 but could only approve $11,631,121. We have no basic argument with the inadequate funding levels, but we do have grave concerns over the administration of the funds on the part of the Bureau of Indian Affairs.

pg.2/letter to American Indian Lawyer Training Program, Inc.

In order to view our complaint in the proper perspective a review of what actually happened to Fort Belknap is in order. (See attachment I) I attended hearings on the implications and ramifications of implementing the Act in Denver, Colorado in April. In January 1980 some of the Tribal staff from Fort Belknap attended an "urgent" meeting in which the Social Service Director of the Bureau of Indian Affairs in the Billings Area Office requested proposals from each tribe in the Area. The staff were informed that all grants to implement the Act would be competitive, and no tribe with a "poor" proposal would be likely to receive grant monies to implement the Act. As you see (attachment II) Fort Belknap ranked the highest in the Area with a score of ninety-four (94) to staff and care for those children referred to Fort Belknap under the Act. Fort Belknap was constructing a Group Home with a capacity of eleven girls (11) and eleven (11) boys and house parents with funds from LEAA. As stated earlier we had already enacted and adopted a Children's Code with specific references to the Indian Child Welfare Act. Much to our surprise every tribe in the Area was funded at approximately $16,000.-$17,000.00. As indicated in Attachment II Fort Belknap requested $55,760.00 and received $16,904.00 or just under one-third (1/3) of our request. At the same time the Cheathem Tribe and Arapahoe Tribe who occupy one reservation but have two agencies each received $16,00, each or about one-half (1/2) of their requests with ratings lower than Fort Belknap's. We do not consider this method ethical or equitable on the part of the Bureau of Indian Affairs. In regard to this matter the Bureau of Indian Affairs has reached the heights of mediocrity. To say proposals will be ranked according to priority and competitiveness and to allocate funds pro-rata does not make sense. We object to this type of treatment by the Bureau of Indian Affairs. Moreover, priorities can only be set by tribes and not the Bureau of Indian Affairs.

Only last week former Secretary of State Cyrus Vance said in the Harvard commencement address that the United States should give funds to countries (allies) in the Western Hemisphere so that they may become friends and develop their own military power with our dollars. He was referring to billions and billions of dollars. Yet Indian Tribes, Indian Nations, and Indian people to whom the United States Government has a special relationship cannot receive adequate funding for a law in which Congress passed. The funds allocated were grossly inadequate and even those inadequate funds were poorly distributed by the Bureau of Indian Affairs.

Sincerely,

Charles "Jack" Plumage
President

Attachment I

STATEMENT OF THE FORT BELKNAP INDIAN COMMUNITY

(Gros Ventre and Assiniboine Tribes)

ON THE INDIAN CHILD WELFARE ACT OF 1978

My name is Charles "Jack" Plumage, and I am here in behalf of the Tribal Government of the Fort Belknap Indian Community (Gros Ventre and Assiniboine Tribes) of the Fort Belknap Indian Reservation, Montana. The Tribal Government is pleased to have this opportunity to testify on the implementation and ramifications of the Indian Child Welfare Act.

It goes without saying that our Indian children are the most critical resource of Indian tribes. At a time when Indian tribes are being challenged from all fronts, the Indian Child Welfare Act of 1978 reaffirms tribal sovereignty in the area of child welfare matters.

Futhermore, the Act will further strengthen the integrity of the Indian extended family custom by eliminating certain child welfare practices which cause immediate and unwarranted Indian parent-child separations, and ameliorating any discriminatory practices which have prevented Indian parents from qualifying as adoptive family or foster parents. The Act requires Federal and State Governments to respect the rights and traditional strengths of Indian children, families and tribes.

It appears to be the feelings of many state and local governments that the Child Welfare Act is equally applicable to tribal governments. It must be emphasized that the Indian Child Welfare Act does not place any restrictions upon a Tribal Government in enacting legislation in Indian Child Welfare matters, but places those restrictions contained in the Act upon the states.

Although the Act is important, it does have several ramifications which must be addressed in order to adequately implement the Congressional policy contained in 25 U.S.C. § 1912. The following are some of the concerns which must be addressed in order to protect our Indian children:

1. Funding: The Congress must appropriate adequate funds which must be made available to Indian tribes for the purpose of preparing their judicial system and increasing their administrative capability in order to handle the increased case load which the Indian Child Welfare Act has stimulated. At the present time, Indian tribes do not have an Indian child welfare agency or department within which to adequately handle the administrative case load and referrals referred to Tribes by the state. At Fort Belknap we are receiving approximately 50% referrals from states which must be handled in a confidential and professional fashion. But without adequate financial resources and staffing, it is extremely difficult to handle these matters.

The Act has also increased the case load of our Tribal Court at a time when our court system is facing extreme financial restraints. The case load in child custody matters has increased by 75% percent since the passage of the Indian Child Welfare Act. These cases are referred to our court not only from the State of Montana but have come from the states of Washington, Utah, Iowa, Illinois, and Minnesota. There appears to be no end in sight and that additional funding for the court system is necessary in order to fully resolve child custody cases and protect the rights of all parties. The Tribal Government of the Fort Belknap Indian Community realizes the importance and significance of the Act and have taken appropriate steps such as redrafting their Children's Code, designated an office to handle referrals from the state, and have attempted to seek our funding to further strengthen our child welfare program.

which leaves approximately a six-month gap in the funding period that will have an enormous effect upon the continuity and progress which the Tribes have obtained up to this point.

4. Other Tribes Involvement: The tribal judicial system and the child welfare program of the Fort Belknap Indian Community have had cases which have involved other tribes within and without the state of Montana. There seems to be a further need for clarification and understanding of the Act in order to resolve jurisdictional disputes which may arise. We have not encountered any disputes which we have not been able to resolve on an amicable basis but there is room for serious problems that must be addressed before they reach proportions that require litigation.

These are only a few of the major areas which concern the Tribal Government of the Fort Belknap Indian Community and we would like to leave the record open in order to provide you with further data in support of this statement. Again, we would like to emphasize that we are pleased with the passage of the Indian Child Welfare Act and feel that it is a step in the right direction in re-affirming and re-emphasizing tribal sovereignty and self-government of Indian Tribes.

2. State Involvement: The Fort Belknap Indian Community has had numerous meetings with the Social and Rehabilitative Services of the State of Montana to discuss the state's position concerning the implementation of the Indian Child Welfare Act. It appears to us that the state of Montana wants little to do with Indian children after passage of the Indian Child Welfare Act. The state appears to have no difficulty in transferring those cases to the Tribes' jurisdiction but relinquish and deny any responsibility beyond the borders of the Reservation. In a time when the State and Federal government are cutting back budgets drastically the whole matter boils down to not wanting to spend any money upon Indian reservations.

3. BIA Involvement: The Bureau of Indian Affairs per se does not have the organization or funding to assist the Tribes or perform the necessary functions as required under the Indian Child Welfare Act. The Tribal Government of the Fort Belknap Indian Community submitted a proposal for Indian Child Welfare Act funds and were told that the funds would be competitive based upon the proposals submitted by the Tribes. However, it has just come to our attention that the funds were not distributed upon a competitive basis but are going to be pro-rated out to the Tribes. The proposal submitted to the Bureau by the Fort Belknap Indian Community received the hi[illegible]ading in the Billings Area but yet will get less that 1/3 of their requ[illegible] which will extremely jeopardize the progress made in the area of child welfare. The funds were to be activated on April 1, 1980 but still have not been due to a hold placed upon them by the Navajo Nation.

Furthermore, these funds are to be utilized before the end of fiscal 1980 and then grant application for fiscal 1981 are to be submitted by December 31 of 1980 but the funds for fiscal 1981 will not be activated until April 1, 1981

APPROVED GRANT APPLICATION REPORTING FORM Attachment II

Instructions: This form is to be completed by Area Offices after all applications have been received. Only those approved grant applications should be listed and sent to the Central Offices in order to allocate funds, using the grant formula enclosed in this material.

Area Office: Billings For Central Office Use:

Submitted by: Billings Area Director " Reviewed by:

Date Submitted: February 29, 1980 Date:

Ranked according to Priority Grantee	Rating Score in ( ) Name of Project	Location or Address	Estimated Client Population	% of Total Indian Population	Funding Requested	Formula Allocation	Actual Funding
			Estimated Client Population				
#1 Ft. Belknap Community Council	Ft. Belknap Group Home (94)	Ft. Belknap Agency Harlem, MT	180	.0011	$ 55,740	16,903	16,903
#2 Arapahoe Tribe	Indian Child Welfare Program (92)	Wind River Agency Ft. Washakie, WY	130	.0008	31,253	16,384	16,384
#3 Assiniboine and Sioux Tribes	Family Oriented Services to Children (89)	Ft. Peck Tribes P. O. Box 1027 Poplar, MT	200	.0012	84,965	17,076.	17,076
#4 Montana United Indian Association	Prevention of Child Abuse in Urban Indian Families (88)	MUIA P. O. Box 5988 Helena, MT	160	.0010	50,444	16,730	16,730
#5 Blackfeet Tribe	Implementation of Child Welfare Act (84)	P. O. Box 850 Browning, MT	150	.0009	34,450	16,557	16,557
#6 Shoshone Tribe	Shoshone Indian Child Welfare (81)	Wind River Agency Ft. Washakie, WY	130	.0008	31,177	16,384	16,384
#7 Salish and Kootenai Tribes	Component #1 Children's Legal Code (77)	Flathead Agency Box 278 Pablo, MT	180	.0011	56,360	16,903	16,903
#8 Crow Tribe	Child and Family Service (75)	Crow Agency Crow Agency, MT	170	.0010	53,380	16,730	16,730
				.0079			133,661

Billings

16,903.0000+
16,384.0000+
17,076.0000+
16,730.0000+
16,557.0000+
16,384.0000+
16,903.0000+
16,730.0000+
133,667.0000*

0.0011+
0.0008+
0.0012+
0.0010+
0.0009+
0.0008+
0.0011+
0.0010+
0.0079*

APR 15 1980

UNITED STATES GOVERNMENT

memorandum

DATE: APR 07 1980

REPLY TO ATTN OF: Acting Deputy Commissioner of Indian Affairs

SUBJECT: Allocation of Indian Child Welfare Act Title II Grant Funds

TO: All Area Directors
Attention: Social Services

Attached you will find the listing of approved grants, which you submitted for funding under Title II of the Indian Child Welfare Act. This includes the client population and the percentage of the total client population for each grant application, the formula allocation per grant, and the actual available funding for each grant.

The formula allocation method was utilized at the 80 percentile level for each area. This was done for the purpose of increasing the size of the remainder in the funding formula in order to more effectively fund a large portion of grant applications (refer to 23.27 (c)(1)). The funds remaining after the formula allocation process were distributed across the areas to the remaining prioritized grant applicants until there were no remaining funds. If this method had not been utilized the majority of proposals would have received a grant of only $15,000.

This procedure left only three possible areas where all approved grants could not be funded. It also resulted in approximately 35% of the approved grant applicants receiving funding at the level they requested. Twenty-six percent of the total approved applications requested $16,000 or less. Only 7 approved applications did not receive funding due to the availability of funds (refer to 25 CFR 23.27 (c)).

As background, the Bureau received 250 grant applications for funding under Title II of the Indian Child Welfare Act requesting a total of $20,180,530. Funding requests for all approved grants totaled $11,631,121. Attached you will also find a brief summary sheet concerning the Title II grant program developed for budget purposes. This information should further explain the Bureau's inability to fund all approved grant applications, and to the amount of the grant request.

With the enclosed information you may proceed with the notification of applicants of funding, realigning or structuring of grants relative to funding level as necessary, and processing of other grant material as needed to initiate the grants. Financial management will be informing you of the formal financial allotments.

Other grant program information that should be kept in mind is:

1) Appeals can only be filed with the Central Office up to thirty days after the decision by the Area Office. According to regulations, area should have informed:

a) All urban groups by February 18, 1980 of their decision.

b) All tribes should have been informed no later than March 18, 1980.

2) Tribes can apply for only one grant. Where it appears a tribe or organization has applied as a single grantee and in a consortium, Area Offices may redistribute the funding in the overlapping grant proposals to any applications that have remained unfunded in their area.

3) The recommended grant period for this initial funding period is from April 1, 1980 through March 31, 1981, or less if the grant proposal is for less than 12 months.

4) Grants should be reviewed a minimum of twice a year. The first review should be completed by area or agency staff no later than the end of September. A random quality control review will be undertaken during October 1980.

5) The next grant application period is tentatively planned for December 1980 and January 1981.

If any questions arise concerning this information, please contact Louise Zokan, Central Office Social Services.

Indian Child Welfare Act, Title II Grant Program

I. First grant application period ended January 18, 1980

II. Total number of grant applications received = 250
Number of grant applications approved = 165 or 66%
Number of grant applications disapproved = 85 or 34%

III. Total funding requested (including both approved and disapproved grant applications) = $20,180,503

Funding requested in all approved grant applications = $11,631,121
Funding requested in disapproved applications = $8,549,384

IV. Number of consortiums which were approved for funding = 17, composed of 150 tribes, or organizations. (Each consortium is considered one grant application in the total grant application figure).

V. Approximate % breakdown on approved applications:
26% Urban organizations (43)
74% Rural or reservation (122)

VI. Funding Alternatives: If all approved grantees (single applications and consortiums) would receive the base, figure of $15,000 as published in the Federal Register, the costs would equal $4,680,000. This would leave only $770,000 for distribution relative to % of client population.

Therefore alternative methods of allocating funds using the funding formula are being considered. The primary alternative is ranking the listing of approved grants in order of priority and then breaking down the client populations in each area by percentile, and funding programs using the formula down to a certain percentile. This would more adequately meet the requirements in 25 CFR 23.27 that each approved applicant "receive a proportionately equitable share sufficient to fund an effective program," and yet meet the requirement that grant approvals "shall be subject to the availability of funds."

VII. Major Concerns in FY 81:

1. The On-Going Child Welfare Program is being incorporated into the Title II program in FY 81. It will be highly improbable that these projects will be able to continue to operate with Bureau funding when their fiscal year ends September 1980, and the next grant application period will most likely not occur until December 1980 and January 1981 and funds will not be allocated before April 1, 1981. A six month gap will occur between possible funding periods.

2. The extreme limitation in funding requires that the grant program take on more structure, and become more highly competitive in order to maximize utilization of funds in the most "realistic" programs with tribes and Indian organizations.

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
BILLINGS AREA OFFICE
316 North 26th St
BILLINGS MONTANA 59101

IN REPLY REFER TO:
Social Services

JUN 03 1980

RECEIVED
Date 6-4-80
Fort Belknap
Community Council

Mr. Charles D. Plumage
President, Ft. Belknap Community Council
Ft. Belknap Agency
Harlem, Montana 59526

Dear Mr. Plumage:

We are transmitting another copy of information which you requested by telephone on June 3.

This same information was provided to you by the Area Director prior to your giving testimony in Denver. If you need additional information, please let me know.

Sincerely yours,

John N. Burkhart
Area Social Worker

APR 1 1980

Social Services

Memorandum

To: Superintendent, Ft. Belknap Agency

From: EAO Social Services

Subject: Funding for Ft. Belknap Child Welfare Act

We are submitting this information as per our telecon of this date, Mr. Charles Plumage, Chairman, Ft. Belknap Community Council, made a direct request for the amount of funding for the Ft. Belknap Indian Child Welfare Act Grants. These amounts are Ft. Belknap $16,903 and Area Wide $133,667. We advised him about the "appeals situation" and that although we had a memorandum from the Commissioner's Office outlining the tentative amounts to the tribes in this area, we had also received a verbal request from Central Office advising us not to dispense this information yet.

This was due to the statement that an appeal had been received in the meantime and that no allocation of funds were to be made until such time as the appeal period had passed and appeals had been resolved. The outcome of appeals would have a definite effect upon the amounts of allocations made to the other tribes. We have request, but have not received, written verification of the above mentioned telephone request. Therefore, these amounts are definitely tentative and will not be final until we received a formal notice of allocation of funds.

Since Mr. Plumage intends to raise this issue at the time of the hearings next week in Denver on the Indian Child Welfare Act, it is our opinion that he should have the information about the formula and distribution method used by Central Office in arriving at the amount of the grant.

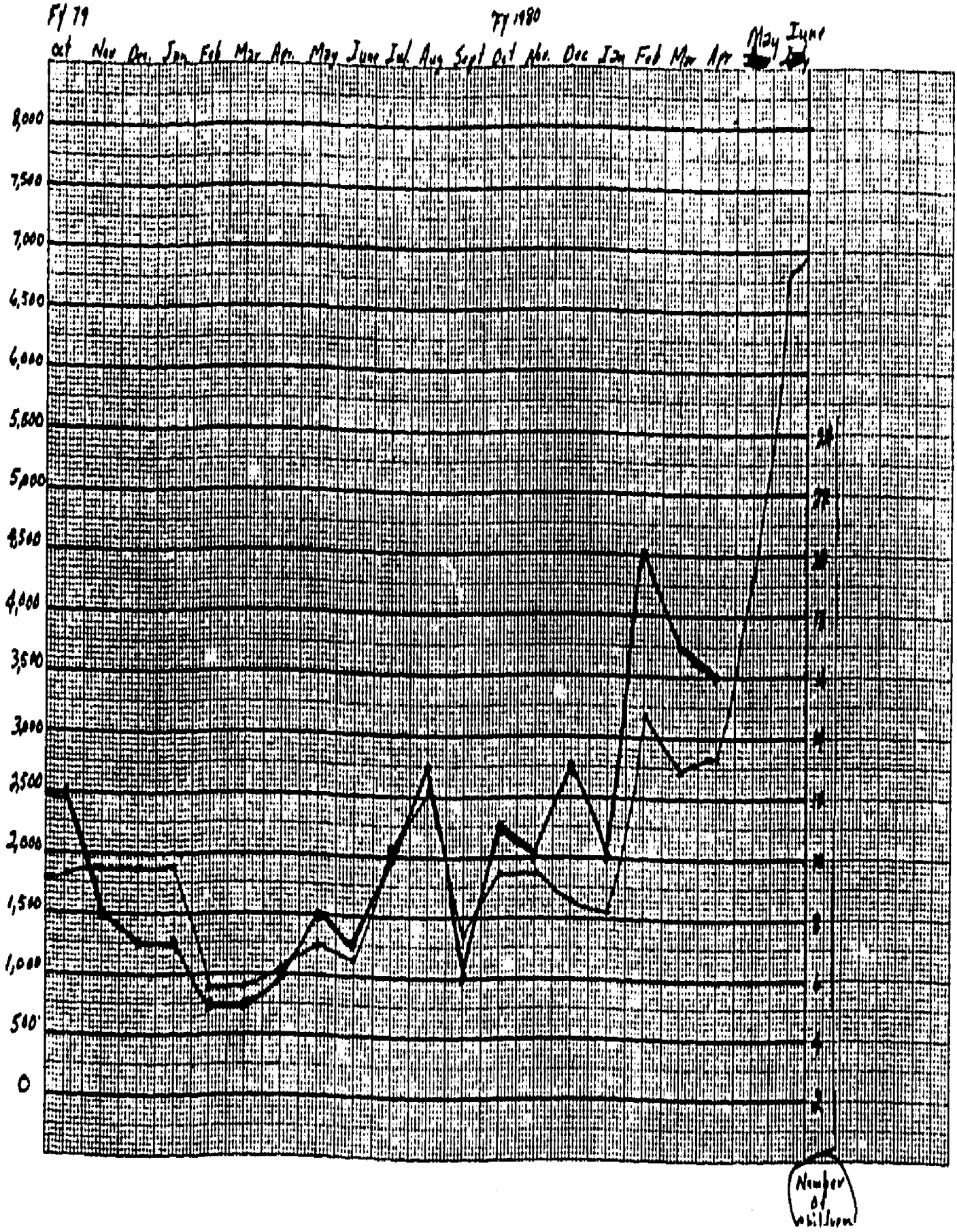
/s/John N. Burkhart

John N. Burkhart
Area Social Worker

Enclosure

cc: Chief, Indian Services

Child Welfare Costs



Senator MELCHER. Our next witness is Bert Hirsch, Association on American Indian Affairs, New York. He is accompanied by Steven Unger.

STATEMENT OF BERTRAM E. HIRSCH, COUNSEL, ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC., NEW YORK, N.Y., ACCOMPANIED BY STEVEN UNGER, EXECUTIVE DIRECTOR

Mr. HIRSCH. We are going to do this the other way around, if you do not mind. Steven Unger is going to give the testimony.

Senator MELCHER. Yes; we have it. You may summarize it if you wish.

Mr. UNGER. Thank you, Mr. Chairman.

My name is Steven Unger. I am the executive director of the Association on American Indian Affairs. With me is Bert Hirsch who often provides counsel to us on Indian child welfare matters.

With your permission, we would like to submit our prepared testimony for the record and just very quickly summarize it now.

Senator MELCHER. Without objection, the entire statement will be made a part of the record at the end of your testimony.

Mr. UNGER. The two matters I would like to concentrate on are as follows. First, we welcome the BIA's recognition this morning that $15 million would be a more realistic figure to meet the 1981 needs of the tribe under the Indian Child Welfare Act and would urge increased appropriations.

Second, in regard to appropriations, we feel that the BIA's distribution formula undermines the ability of the tribes to successfully perform their Child Welfare Act grants and would urge that appropriations under the act be made not on the per capita basis that the BIA has used but on a comparative assessment of need.

The other matter I would like to highlight is that we wholeheartedly endorse the Navajo Nation's call for tribal involvement in the boarding school study mandated by title IV which we believe is an essential part of the act.

I might recall that this committee in its report on the act said that it expected the Department of the Interior to work closely with it in the development and implementation of the boarding school study. We feel that as long as children are forced to attend boarding schools, the commitment of the act to protect the integrity of Indian families will not be fulfilled.

We would also urge the committee to consider holding oversight hearings on the boarding school situation early in the 97th Congress after the report is received.

Thank you.

[The prepared statement follows. Testimony resumes on p. 121.]

PREPARED STATEMENT OF STEVEN UNGER, EXECUTIVE DIRECTOR, ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC., AND BERTRAM E. HIRSCH, COUNSEL, ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.

Mr. Chairman and members of the Select Committee, My name is Steven Unger. I am Executive Director of the Association on American Indian Affairs. The Association is a national, nonprofit organization founded in 1923 to assist American Indian and Alaska Native communities in their efforts to achieve full civil, social, and economic equality. It is governed by a Board of Directors, the majority of whom are Native Americans.

With me is Bertram E. Hirsch, an attorney who provides counsel to and frequently represents the Association in Indian child welfare matters.

We would first like to thank the Select Committee for calling these hearings and for permitting the Association to testify.

The Congress and the Committee deserve congratulations on the commitment made through the Indian Child Welfare Act to protect the most critical resource of American Indian tribes—the children. As testimony before the Congress for the last six years has abundantly demonstrated, the child welfare crisis caused by the unwarranted separation of Indian children from their families has been of massive proportions and nationwide in scope. Assaults on Indian family life by state and federal agencies have undermined the right of Indian tribes to govern themselves and have helped cause the conditions where large numbers of people feel hopeless, powerless, and unworthy. Perhaps nothing has so weakened the incentive of parents to struggle against the conditions under which they live as the removal of their children.

Enactment of the Indian Child Welfare Act has been responsible for new hope among Indian parents and tribes that they will be able to raise their children in an atmosphere free from unjust governmental interference and coercion. It has changed the basis upon which state and federal agencies make decisions affecting the custody of Indian children to one with a more conscientious regard for the rights of Indian tribes, parents and children. Tribes are creatively and dynamically developing programs to halt and reverse the removal of children and to assure that they are well cared for within the tribal community. State courts and agencies have generally been receptive to working with the tribes to see that the purposes of the Indian Child Welfare Act are fulfilled.

We share the Committee's concern in holding these oversight hearings to help assure effective implementation of the Act. Our testimony today will concentrate on four areas:

(1) Implementation of Title I;
(2) Funding of Title II;
(3) The boarding school study mandated by Title IV;
(4) The need for technical amendments to the Act.

TITLE I IMPLEMENTATION

The Indian Child Welfare Act has been generally well received throughout the United States by state courts and agencies and by the Indian tribes. Tribal court orders have been granted full faith and credit by states. State courts and agencies and their tribal counterparts in a number of states have made informal agreements regarding transfers of jurisdiction and the delivery of social services, and many transfers have been accomplished without difficulty. Involuntary and voluntary placements of Indian children have taken place in accordance with the provisions of the Act. Many tribes are enhancing the ability of their courts to adjudicate child-custody proceedings; developing sophisticated children's codes; and establishing comprehensive social service delivery systems. A number of Indian children who were adopted prior to the Act have now been able to acquire information regarding their tribe and the background of their natural parents.

In sum, the Act has been of substantial benefit to the best interests of Indian children, families and tribes, and has brought about greater cooperation and understanding between tribal and state courts and agencies.

A further indication of the success of the Act is that it has withstood constitutional challenges.

In a South Dakota case, *Guffin* v. *R.L.*, a non-Indian foster family who, with the consent of the parents, had obtained custody of several Indian children (all residents and domiciliaries of the reservation) through an order of the Lower Brule Sioux Tribal Court, sought guardianship in a South Dakota court after ignoring the order of the tribal court to return the children to their parents. The South Dakota court ruled that it did not have jurisdiction and dismissed the guardianship petition. The foster family appealed, arguing that the Indian Child Welfare Act was unconstitutional. South Dakota's Supreme Court unanimously dismissed the appeal on April 9, 1980, affirming that the Indian Child Welfare Act is within the constitutional power of Congress to legislate concerning Indian affairs, and that legislation defining the jurisdiction of Indian tribes is premised on the political status of the tribe and not on a racial classification.

In an Oklahoma District Court case, *In the Matter of Melinda Twobabies* the court upheld the jurisdiction of the Southern Cheyenne Tribe and rejected

the argument of the state that the Indian Child Welfare Act violated the Tenth Amendment.

In Alaska, in November 1979, the Supreme Court dismissed the state's petition for a ruling that Alaska Native children born after the close of enrollment in the corporations created by the Alaska Native Claims Settlement Act in 1971 are not covered by the Indian Child Welfare Act.

The State of Alaska, in particular, has since then taken noteworthy steps to assure the effective implementation of the Child Welfare Act. In a resolution adopted on April 29, 1980 the Alaska State Legislature proclaimed that:

(1) the legislature endorses and supports the concept and policy of the Indian Child Welfare Act of 1978 (Public Law 95-608);

(2) the governor is urgently requested to direct the Department of Health and Social Services to promptly take the steps necessary to implement the Act in Alaska and to provide the financing necessary for implementation;

(3) the chief justice of the Alaska supreme court is requested to direct the court system to promptly take steps necessary to cooperate in the implementation of the Act in Alaska.

TITLE II FUNDING

Ultimately, responsibility for correcting the child welfare crisis rests properly with the Indian communities themselves. Congress recognized this in providing child and family service program grants to tribes and Indian organizations under Title II of the Act. The objective of such programs is to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parents should be a last resort.

In allocating Title II appropriations the BIA provided approved grantees with a base amount of $15,000. After each grantee was allocated the base amount, remaining funds were to be allocated equal to the percentage of the "total national Indian client population" to be served by the grantee. A number of tribes, for example in the Billings area, were advised by the Bureau that $15,000 would be the maximum grant, and as a result applied only for that amount.

Under the appropriations made by the BIA, we are informed that two of the BIA areas of the country will each receive approximately 20 percent of the funds. None of the other areas will receive more than 10 percent of the funds, and five areas will each receive less than 5 percent of the funds. Among the areas receiving limited funding are tribes in the Great Plains and Southwest, areas where Congressional studies and our own experience reveal tremendous unmet child-welfare needs.

The BIA's distribution formula undermines the successful implementation of the Act and the performance of Title II grants by Indian tribes and organizations because it is based on a per capita basis and not on an assessment of their relative needs. The purpose of Title II grants—to prevent the break-up of Indian families—necessitates allocations based on an assessment of the needs of the applicants.

We note that the Bureau's budget request of $5.5 million for the Indian Child Welfare Act was the same for fiscal year 1981 as for fiscal year 1980. These amounts are inadequate to meet the urgent child and family-service needs of Indian communities and should be increased.

We would also like to point out that, in addition to authorizing direct appropriations to the Department of the Interior, the Act authorizes the Secretary of the Interior to enter into agreements with the Secretary of Health and Human Services to use funds appropriated to that Department for the establishment and operation of Indian child and family services both on and off reservation. Implementation of this feature could provide additional funding to Indian tribes for child and family service programs. Yet, to the best of our knowledge, the Secretary has not attempted to enter into such agreements nor has there been any effort to request that the Congress expressly appropriate funds for the purpose of fulfilling such an agreement.

TITLE IV BOARDING SCHOOL STUDY

Progress already made possible by the Act in eliminating the unwarranted placement of Indian children in adoption and foster care, throws into even sharper relief the destruction of Indian family and community life caused by the federal boarding school and dormitory programs. More than 20,000 Indian children (thousands as young as 5 to 10 years old) are placed in U.S. Bureau of Indian Affairs' boarding schools. Enrollment in BIA boarding schools and dormitorie

is not based necessarily on the educational needs of the children; it is chiefly a means of providing substitute care. The standards for taking children from their homes for boarding school placement are as vague and as arbitrarily applied as are standards for foster-care placements.

In Title IV of the Indian Child Welfare Act Congress declared that "the absence of locally convenient day schools may contribute to the breakup of Indian families." Congress directed the Secretary of the Interior to submit a report on the feasibility of providing Indian children with schools located near their homes within two years from the date of the Act; that is, by November of this year. In its report on the Indian Child Welfare Act, this Committee stated:

> It is the expectation of the committee that the Secretary of the Interior or his representative will work directly with the staffs of the appropriate Senate and House committees to determine the particulars of said plan and its report form.

In the House, the report of the Committee on Interior and Insular Affairs, stated:

> The committee was informed of the devastating impact of the Federal boarding school system on Indian family life and on Indian children, particularly those children in the elementary grades and considers that it is in the best interests of Indian children that they be afforded the opportunity to live at home while attending school. It is noted that more than 10,000 Navajo children in grades 1 to 8 are boarded.

The Title IV report is potentially one of the most significant parts of the Act. Until Indian children are no longer forced to attend federal boarding schools, the commitment made by Congress "to promote the stability and security of Indian tribes and families" will not be fulfilled. We urge the Committee to consider holding oversight hearings on the boarding school situation early in the next Congress, after the report is received.

We would also like to point out that there are Indian children for whom there are local day schools, but who are placed in boarding schools for so-called social reasons. In making these placements, is the BIA following good child-welfare practice as mandated by the Act that placement out of the family will only be a last resort? On this aspect of the boarding school issue, there is no need to wait for the Title IV boarding school study—and the Committee may want to investigate immediately.

TECHNICAL AMENDMENTS

Since the enactment of the Child Welfare Act the Association has identified provisions of the law which require technical amendments to eliminate conflicting provisions, clarify ambiguities, and/or more clearly express Congressional intent.

For example, the Title I provisions regarding voluntary consents to foster care placements or termination of parental rights do not expressly limit the application of the provisions to state court proceedings, as we believe was clearly the intent of Congress. Questions have been raised as to whether these provisions were intended to apply to tribal court proceedings as well. All other Title I sections are made applicable to state court proceedings only. We recommend a technical amendment that clarifies the provisions.

In the section of the Act pertaining to involuntary placements, it is possible for a child-custody proceeding to be held on the 11th day after notice of the proceeding is received by the Secretary of the Interior. However, the same section provides that the Secretary shall have 15 days after receipt of notice to notify the parents, Indian custodians, and the tribe of the proceeding. As the section is currently drafted, a child-custody proceeding can be held in a state court prior to the statutory date within which the Secretary must attempt to notify potential parties. This anomaly, which obviously results from a drafting error, should be corrected.

The need for other technical amendments exists. The Association would welcome the opportunity to present to the Committee a list of these other amendments early in the Ninety-Seventh Congress.

CONCLUSION

Ongoing Congressional interest and further oversight hearings can play a vital role in assuring successful implementation of the Indian Child Welfare Act.

We hope this presentation of the Association's views will be useful to the Committee.

Senator MELCHER. Is Patty Marks still here?

Patty, it is my impression that the Navajo Nation is interested more, not in boarding schools, but in a program of schools close enough to the family unit where the children are not removed from the family for education purposes to a boarding school but remain in the family home and go to school each day—close enough so that they get on a bus and somehow get there and return home every evening. Is that correct?

Ms. MARKS. Mr. Chairman, again I am speaking from my personal knowledge because I have not recently discussed this in detail with the tribe. But recalling the hearings that Mr. Taylor and I had when we were on the staff for this bill, the Nation has never really taken a position pro or con on boarding schools for the simple reason that the Navajo Nation is so large and situations are unique.

There will be intances, I would assume, not just on Navajo but on other reservations, where boarding schools are a workable and acceptable alternative. However, Navajo is concerned with the lack of availability of day schools.

So I guess my answer to your question is twofold: There may be situations—and I use the word, "may"—where a boarding school is acceptable to the local people, but in the majority of instances I believe the position has always been as you have said—for locally convenient day schools.

Senator MELCHER. Is Anslem Roanhorse here also?

Would you return to the witness table?

It is my understanding that part of your request for this study, if we get on with it, is to identify the fact that for the Navajo Nation they do not want to set up this program in conjunction with boarding schools just to have boarding schools for social needs. Is that correct?

Mr. ROANHORSE. To reiterate what Patty Marks said, I think there has to be a study, and then based on the study we need to determine the best possible way of setting up the day schools.

Senator MELCHER. That is the point. The Navajos are looking more to the point of day schools rather than boarding schools. Is that correct?

Mr. ROANHORSE. Yes, sir. I think the underlying thing is that the Indian families should be kept together and every effort should be made to prevent Indian family breakups.

However, there is also the point that we need to have some other resources, and I think this is where we need to consider the mixed feelings as to what the benefits we can get from the Bureau are, on boarding schools. This is why there is a need to do a study to determine what alternatives we are able to take.

Senator MELCHER. It is my understanding from Chairman MacDonald that it is the intent of the Navajo Nation, as much as is possible, to have the schools located close enough to the families so that the child remains part of the family unit every day.

Mr. ROANHORSE. Yes, sir.

Senator MELCHER. Mr. Butler, we are picking up the pieces a little out of order here, but could you tell us, on behalf of the Bureau, that the study will be coordinated with the tribe? We do not want the study just to come in as a sterile object which then has to be reviewed by the tribe. We prefer that the study be in cooperation with tribal input during the study.

Mr. BUTLER. Mr. Chairman, I am not directly, personally involved in that study. It is being conducted under the direction of Dr. Earl Barlow, the Director of the Office of Indian Education.

It is my understanding, however, that the study is being conducted under a contract with an Indian educational consulting firm in Phoenix, and my area social worker in Phoenix was privileged to be at one of their briefings in March in which it was my understanding that they had just finished the study on the demographic data, that the field work had actually not started at that point in time.

But certainly, in my personal judgment, it should be conducted in full consultation with the tribe.

Senator MELCHER. The committee will send a letter to Earl Barlow and cite our interest. It will be a much better study if the tribe is involved in it rather than the tribe reviewing it after the study is completed.

Patty?

Ms. MARKS. I have one point of suggestion, Mr. Chairman. I have spoken personally with a number of tribal social workers in the past few weeks as we were preparing for this oversight, and I believe that many of them—including myself—were unaware that this study is taking place or is even being contracted out.

Perhaps one of the best ways of obtaining Indian input would be if the Bureau, or some mechanism, would send notification in the form of a press release—something that simple would do—simply notifying the tribes and the appropriate officials that this is taking place and who the contact person is if they have specific information which might be acceptable and needed in this study.

Senator MELCHER. It sounds to us, Patty, that mainly the study will center on the Navajos. Is that correct, Mr. Butler?

Mr. BUTLER. Mr. Chairman, there is no question about this because the Navajo Nation has roughly 50 percent of all of the Indian children in boarding school care, that is, in boarding school care by the Bureau of Indian Affairs. A large number of these—and the gentleman from the Navajo can correct me if I am wrong—are in what are referred to as 5-day boarding schools where the children do go home on weekends. Is that correct?

Mr. ROANHORSE. Before I go to that question, I would also like to say for the record that we were not aware of the study that is being made in the Phoenix area or the contractor that has been agreed upon.

On this study, I think there are some schools that still exist on the Navajo Reservation that encompass not only the 5-day boarding schools, but the 9-month boarding school setup.

Senator MELCHER. Getting back to your point, Patty, we would encourage the Bureau to communicate with the tribes, however it can, that the study has been contracted for, and that input from the tribes is sought. Since at least half of the youngsters are from the Navajo Nation, obviously, a great part of this study will zero in on the Navajo, but we would like to have the input, observations, and recommendations from other tribes as well.

The act is fairly new, but what is your experience so far in working in cases with the States and the tribes? Does it look like it is going to work out? Are States and tribes going to cooperate with each other?

Mr. HANSEN. I think so. I had an interesting experience which I think is indicative of what is happening across the country with this law. Shortly after it was enacted, I was invited by the South Dakota supreme court to address all of the justices of that supreme court plus most of the other trial court judges from around South Dakota on what the law does.

At the outset of the couple of days that I spent with the judges in South Dakota, there was a fair amount of hostility and lack of understanding about the law. But as time went on in that meeting, the chief justice of the supreme court of South Dakota expressed his very strong support for the law, and all the other judges fell in line. The attorney general's office there, which had originally been contemplating some kind of constitutional challenge to the law, has apparently dropped any thought of pursuing that approach.

That has been my experience across the country—an initial period of trying to understand what the Congress was doing and why, and then an approach which is basically one of cooperation with the tribes. Pretty much, the law has been working; it has been working well; the tribes have been pleased with it; the States have been working with it; and I do not think that there has been any major problems.

There have been a couple of court challenges to different aspects of the law. In each case, the law has sucessfully withstood those challenges. I think that will be the trend as time goes on.

Senator MELCHER. Thank you very much; I am glad to hear that.

Thank you, Steve and Patty, for your testimony.

We have a number of witnesses who do not seem to be here. I do not see Mickey Old Coyote. Nor do I see David Rudolph or Donna Loring. Oh, they are here; they just came in.

Would you please approach the witness table now? I am under a time constraint which I cannot avoid. I want to complete my remarks now.

Testimony from the Crow Indian Tribe representatives who are not here will be made a part of the record when it is submitted, without objection.

[The following letter and memorandum were subsequently received.]

Crow Tribal Court

P.O. Box 459 Crow Agency, Montana 59022 Phone 406 638-2630 638-2626

July 8, 1990

RECD JUL 13 1990

Senator John Melcher
Select Committee on Indian Affairs
United States Senator
Washington, D.C. 20510

ATTENTION: Pete Taylor

Dear Mr. Taylor

As Director of the On-Going-Child Welfare Program I am writing to you on behalf of the Crow Tribe to express my concern regarding the handling of Title II funds by the Bureau of Indian Affairs.

I want you to know that the Crow Tribe like other Indian Tribes viewed the enactment of the Indian Child Welfare Act as critical legislation and it was prepared to carry on a child welfare program under Title II. Incidently, since the enactment of the Indian Child Welfare Act the Crow Tribal Court has handled a number of child custody proceedings recently however, the Crow Tribe have not been notified of token funding under Title II of this same act.

I certainly do not want to intimidate that the Crow Tribe reject or is any way ungrateful for the approximately $16,000.00 it is to receive however. I am concerned about the procedure utilized by the Bureau of Indian Affairs and the continuing difficulties in contracting such a small program. In handling the funding of various Tribes here in the Billings Area the Bureau of Indian Affairs lead all of us to believe that we should take time and effort in preparing proposals and submitting same for funding. The Bureau did say that all Tribes would probably receive no less then the minimum which was approximately 15 to 16 thousand however, the proposal submitted based upon merit after proper evaluation could definitely receive more. It is a sad commentary to note that the B.I.A. put Tribes through time and effort regarding preparation of proposals opted for the easy way out in funding Indian Tribes the minimum.

Of course, we realize that the money situation is tight however, we at Crow raise the question whether or not the understanding as handled by the B.I.A. will do anyone any good. I am sure the Bureau will make the argument that this was the most equitable and fair way (i.e. funding each Tribe just a little) but this certainly would be questionable furthermore, we at Crow were never asked how the funds should be distributed and therefore, could not offer our input.

We have requested a meeting with the proper officials here at the Billings Area Office however, in the hopes that this will not happen again. Also, we would appreciate your comments.

Mickey Old/Coyote

Crow Country

CROW TRIBAL COUNCIL

OFFICE OF THE SECRETARY
CROW AGENCY MONTANA 59022

June 14, 1981

FOREST HORN, Chairman
ANDREW BIRDINGROUND, Vice Chairman
THEODORE (Ted) HOGAN, Secretary
RONALD LITTLE LIGHT, Vice Secretary
PHONE Area Code (406) 638-

MEMORANDUM

TO: AREA DIRECTOR, BILLINGS, MONTANA

FROM: TRIBAL CHAIRMAN, CROW TRIBE

SUBJECT: CHILD WELFARE ACT FUNDING FY 81

We have recieved notification that we have been funded $16,730.00 for our proposal of $77,946.00. It is our feeling that token funding of this program is grossly inadequate and does not recognize nor address our problems.

Therefore, we request a one day meeting this month with the BIA Staff from whatever level necessary to provide answers and funding during the course of the meeting.

Those recommended for attendance are: Raymond Butler from the Community Services Central Office Washington, D.C., the Directors of each On-Going Child Welfare Program of each tribe in Montana; Tom Whiteford, Director, Montana Inter-tribal Policy Board, Merle Lucas, Director, Montana Indian Service Division, and Representative form Senator Melcher's office, The Chief Judges from each of the Reservations, and any other official that well be beneficial.

Please, advise as to when this meeting can take place.

Senator MELCHER. Any other comments can be made part of the record also, by anyone wishing to submit them in writing. The hearing record will remain open for 10 days.

Our next witnesses are David Rudolph and Donna Loring. David, please proceed.

STATEMENT OF DAVID RUDOLPH, ADMINISTRATIVE ASSISTANT, CENTRAL MAINE INDIAN ASSOCIATION, PRINCETON, MAINE, AND DONNA M. LORING, EXECUTIVE DIRECTOR

Mr. RUDOLPH. Good morning, Mr. Chairman.

Donna Loring is the executive director of the Central Maine Indian Association, and she has our statement.

Senator MELCHER. Ms. Loring?

I have a time constraint; it is afternoon now; I should have left here about 10 minutes ago. Do you have a really short statement?

Ms. LORING. It is not really that short.

Mr. RUDOLPH. Briefly, the statement that we were going to present is quite a lengthy statement with several additions to it. But we have tried to abbreviate it into a two page presentation, if that will be all right, sir.

Senator MELCHER. Certainly; that will be fine.

Ms. LORING. I am Donna Loring, and I am a Penobscot and the executive director of the Central Maine Indian Association. The purpose of my presence is to express concern about the way the Bureau of Indian Affairs is handling the Indian Child Welfare Act title II grants program. As I am limited as to my time, I wish to express my feelings by showing a few examples of the Bureau's inadequate handling of this situation.

I feel the Bureau was not prepared to handle a grant application program. They were not prepared to give us a receipt when we delivered our application to the central office of the Bureau in Arlington, Va. They discussed, in our presence, the review process and made some off-the-cuff decisions.

I feel the Bureau did not follow its own regulations. They did not have application kits available; they did not provide technical assistance before turning us down; they required of us community support letters in violation of section 23.25(b(3); and they certainly violated section 23.27(c)(1) in the development of their funding formula.

This was not proportionately equitable for off-reservation native American programs which got only 26 percent of the funds while trying to serve 65 percent of the native American people. Thus the $15,000 was not in any sense an effective program funding level. At the same time, we were turned down because we applied for $93,000 as advised to do so by a high ranking Bureau official.

I feel that the Bureau's review was not adequately performed.

Our program application was severely criticized because it resembled, too closely, our current continuing research and demonstration grant from the Administration for Public Services. We were hoping to continue our demonstration efforts chiefly.

Our goals were not those of the act—prevention and outreach—yet 65 percent of the activities related to those efforts. Other efforts

included in our application were code development, foster home licensing efforts, and so on.

Our appeal material was not reviewed during that procedure. Again, only our initial application seems to have been criticized.

I could go on, but Central Maine Indian Association's administrative assistant, David Rudolph, has prepared extensive and more detailed comments which you can read.

Briefly, I would like to make a few recommendations: That the Bureau be required to follow its own regulations; propose an appropriate funding formula which will support effective programs, available on a competitive basis; and establish appropriate program announcements, application kits, review criteria, and technical assistance procedures.

If you have any other questions, especially relating to details of our problems, Mr. Rudolph and I will be happy to answer them.

We had planned to hand deliver some testimony from Mr. Wayne Newell, but we did not quite make connections, so we do not have that testimony.

Senator MELCHER. We have this material submitted by you. Without objection, it will be included in the record at the end of your testimony.

I think you both came in during the last few minutes. We have been going over these same pertinent points that you have made. We have been going over them with the Bureau, and we hope that your recommendations, which have been pretty much the recommendations that we have been trying to stress with the Bureau, will be carried out from now on. Granted, they had a very short period of time to get this in motion. We are not completely satisfied with their efforts so far; nor are they. So I think we are all talking the same language.

The Bureau is requesting $150,000 in the budget this year to establish two new courts in Maine.

Mr. RUDOLPH. Is that child welfare courts, or is that just general tribal courts?

Senator MELCHER. They are tribal courts to handle child welfare.

Mr. RUDOLPH. Yes; but as far as I know, in the propositions for those—I have been following the Federal Register—they did not have any child welfare aspects in those tribal courts at the time. Now, whether they are adding them or not I do not know.

Of course, we represent off-reservation Indians.

Senator MELCHER. We can only go on their testimony, and that is, that part of their justification is the Indian Child Welfare Act, as part of their testimony for the justification of the two new courts. It involves a total of 14 new courts, 2 of which are in Maine.

Mr. RUDOLPH. I see.

We are not under their jurisdiction, unfortunately. We are an off-reservation entity, so that does not benefit the people who live off reservation primarily.

Senator MELCHER. Wait a minute; let us get clear on that. Are you representing the Penobscot?

Mr. RUDOLPH. Donna is a Penobscot. The Central Maine Indian Association represents off-reservation native Americans in the southern 15 counties of Maine.

Senator MELCHER. I see.

Mr. RUDOLPH. Essentially, that will not affect us. And as we have analyzed our study under the research and demonstration program, the interesting factor is that the State intervenes in cases on a 4-to-1 ratio, off to on reservation native American families. This is of great concern to us since they are more accessible to the State and do not have all of the supports that the tribal situation can offer on the reservation. Our population is more easily affected and does not have the supports.

Senator MELCHER. We will try to cooperate with you. That does seem to be very much a problem that will not be addressed by these two new courts. We will try to cooperate with you and see whether we can work out something that fits within the budget requests that will be of help to you in this coming fiscal year.

Mr. RUDOLPH. We will be very happy to keep in touch with you sir.

Senator MELCHER. All right. Thank you very much.

[The prepared statement follows:]

CENTRAL MAINE INDIAN ASSOCIATION INC.,
Orono, Maine, June 30, 1980.

Re Testimony before Oversight Hearings on the Indian Child Welfare Act.

Senator JOHN MELCHER, *Chairman,*
Select Committee on Indian Affairs,
Washington, D.C.

GENTLEMEN: I am Donna Loring and I am a Penobscot and the Executive Director of Central Maine Indian Association. The purpose of my presence is to express concern about the way the Bureau of Indian Affairs is handling the Indian Child Welfare Act Title II Grants program. As I am limited as to my time I wish to express my feelings by showing a few examples of the Bureau's inadequate handling of this situation.

I feel the Bureau was not prepared to handle a grant application program. They were not prepared to give us a receipt when we delivered our application to the Central Office of the Bureau in Arlington, Virginia. They discussed, in our presence, the review process and made some off-the-cuff decisions.

I feel the Bureau did not follow its own regulations. They did not have application kits available—23.23. They did not provide technical assistance before turning us down—23.29(b)(2–4). They required of us community support letters in violation of 23.25(b)(3).

They certainly violated 23.27 (c)(1) in the development of their funding formula. This was not proportionately equitable for off-reservation Native American programs which got only 26 percent of the funds while trying to serve 65 percent of the Native American People. Thus, the $15,000, was not in any sense an effective program funding level. At the same time we were turned down because we applied for $93,000 as advised to do so by a high ranking Bureau official.

I feel that the Bureau's review was not adequately performed.

Our program application was severely criticized because it resembled too closely our current continuing research and demonstration grant from Administration for Public Services. We were hoping to continue our demonstration efforts, chiefly.

Our goals were not those of the ACT—"prevention and outreach"—yet 65 percent of the activities related to those efforts. Other efforts included in our application were code development, foster home licensing efforts, etc.

Our appeal material was not reviewed during that procedure. Only our initial application seems to have been again criticized.

I could go on, but Central Maine Indian Association's Administrative Assistant, David Rudolph, has prepared extensive and more detailed comments which you can read.

Briefly I would like to make a few recommendations. That the Bureau be required to follow its own regulations; propose an appropriate funding formula which will support effective programs, available on a competitive basis; and establish appropriate program announcements, application kits, review criteria and technical assistance procedures.

If you have other questions, especially relating to details of our problems, Mr. Rudolph and I will be happy to answer them.

We also are hand delivering testimony of a similar nature on behalf of Wayne Newell, Director of Health and Social Services of the Indian Township Reservation of the Passamaquoddy Tribe.

Thank you for your time and your concern.

PREPARED STATEMENT OF DONNA M. LORING OF THE CENTRAL MAINE INDIAN ASSOCIATION INC., PREPARED BY DAVID L. RUDOLPH, ADMINISTRATIVE ASSISTANT

Gentlemen: It is with concern that I, Donna Loring, a Penobscot and Executive Director of Central Maine Indian Association, come here today. Concern that has become alarm as I hear other testimony and recall our experiences in regard to problems around the administration of the Indian Child Welfare Act by the Bureau of Indian Affairs.

To put it bluntly, Central Main Indian Association staff, who have been involved in the development of this Act and the development of the regulations, and who have been involved in the operation of a child and family support research and demonstration program for the past two and a half years, have had nothing but problems with their attempt to secure a continuing program grant under the Indian Child Welfare Act. I emphasize continuing for reasons which will be apparent later.

As you can see, we have been involved in the Indian Child Welfare Act right from the start. In fact our planner, who doubles as our legislative and administrative ageney "watch dog," has had to spend innumerable hours preparing comments regarding to the regulations. He has had to point out on three occassions where off-reservation Native American organizations were virtually being cut out of access to these funds as authorized under Title II, Sec. 202 of the Act.

Definitions were incomplete in regard to this population until we checked with legislative committee staff to secure an interpretation of the Legislative intent.

Formula for the distribution of funds in the regulations still are weighted to federally recognized tribes in that "actual or estimated Indian child placements outside the home" based on data from tribal and public court records, etc. are to be counted. (23.25(a)(1))

Our study shows that over the two and a half years of our continuing grant, Maine's Human Services system intervened in Indian families on a ratio of 4–1, off- to on-reservation Indian families. But, upon examining the public records, department records, only 19 of the 34 records reviewed clearly identified the family or the child as Native American.

But let me pass on to our grant application problems. Again, right from the start we had troubles. We feel that the Bureau was not, or at best ill, prepared to handle a grant program; did not follow its own regulations in a seemingly arbitrary manner; and mishandled the review process.

The following "events" illustrate the grounds of these feelings:

Our Planner was unable to secure from the "nearest" Bureau office—the Eastern Regional Office here in D.C., or from the Central Office application kits which were supposed to exist per the regulations, 23.23, and as referred to in the Program Announcement—Federal Register, 4 December 1979, page 69732. It was agreed we could use our Administration for Native Americans format.

Our Planner was unable to determine from the Program Announcement, cited above, the program priorities which would have precedence for this grant cycle.

Having read and re-read the Grant Fund Distribution Formula, our Planner, in desperation, called the Bureau with questions regarding it. He was told by a ranking official that the formula should be interpreted in such and such a fashion. The final figure jointly agreed to totalled $95,000.

Regardless, he forged ahead and prepared what we all thought was an appropriate application.

Then came the delivery of the Grant package. Not knowing how many packages we had to deliver, our Planner and I hand delivered 15 copies to the Bureau's office in Arlington on the morning of 15 January 1980 for the deadline of 18 January. Also, we were told by the Eastern Regional Office to deliver these to the Central office.

We were asked to leave only five (5) copies, and when we asked for a receipt the reaction was "For What?" This constitutes another violation of their own regulations—23.20(b)(1).

Not knowing the make-up of the reviewing team for the Eastern Area applications we indicated we were going to drop some copies off to various H.E.W. personnel. We were told that those we named—our Administration for Public Assistance research and demonstration project officer and our Indian Child Welfare Act contact in Administration for Native Americans, would be reviewing grant applications. It was decided, off-the-cuff, to have reservation personnel review off-reservation applications and vice-versa.

The review was promptly done, but! The reviewer's comments indicated:

Our program needed to be "recast to reflect current goals and objectives" under Title II for a "strong concentration on prevention and outreach." 65 percent of our activities planned pertained thereto, and the balance targeted code development, preparation of Native American homes for licensing as foster homes, foster home parent training, staff training, etc.

Our travel allowances were not appropriate. Under our secured research and demonstration grant, yes; but not under this grant action. How were we to know that? We have witnessed constant travel to the Bureau on the part of nearby tribal staffs for training, board staffs for introduction to Board responsibilities, etc. Again, how were we to know? Certainly there were no program guidelines in the Program Announcement.

From the review comments we feel we definitely were prejudicially reviewed by someone who had a thorough knowledge of our A.P.S. research and demonstration grant, but did not know of our continuing problems.

The commentor evidenced a lack of understanding of the Bureau's own regulations: "There was not sufficient evidence of support from the community," etc. However, Regulation 23.25(b)(3) seems to exempt an off-reservation Indian organization from "the demonstrated ability has operated and *continues* to operate an Indian child welfare or family assistance program." We also feel that statement should have given Central Maine Indian Association somewhat of an edge over other programs which had never dealt with such problems.

Finally, in violation of another regulation 23.29, (b)(2-4), and our request, the Bureau *did not* offer technical assistance to clear up any application gaffs before the final review and issuance of denial of the grant. In fact we feel they did not carry out their *three* level review process (23.29, 23.31, 23.33). But we don't find that appropriate either as it is too long a process.

Needless to say, we appealed. In that appeal our Planner addressed application deficiencies mentioned, pared down the budget request, etc. In other words, we accepted the comments as technical assistance. What happened? From a review of the comments on our appeal we feel the reviewer did not review the materials submitted, but instead picked more severely, and incorrectly, at our initial application.

More woes could be recounted, but I would like to proceed to what we feel should be done to correct this situation for another go-around:

We feel the funding formula is a mockery of even common sense and certainly of the Bureau's own regulations that "insofar as possible all approved applicants (will) receive a proportionately equitable share sufficient to fund an effective program." (23.27(c)(1)). (Emphases ours.)

Twenty-six percent of the funding was given to off-reservation Native American agencies and is not proportionately equitable since 65 percent of all Native Americans live off-reservation according to A.N.A.

Fifteen thousand dollar grants cannot be termed sufficient for an effective program.

We do wish to inform the Committee that we have considered proceeding with an injunction to stop the entire funding until these problems could be addressed. We have deferred on that for the present.

We do have some recommendations. Let us describe them:

1. If the funds have not been given out yet, we ask this committee to freeze them until the Bureau can appropriately distribute them. Otherwise, for the next program year the grants should not be give-away, "be all things to all people," types, but a competitive grant application approach for the establishment of effective programs with a base of at least $60,000. This should include demonstration funds at 80 percent, planning funds at 15 percent, and research funds at 5 percent. Also, this year's grant programs ought not be counted as part of a "con-

tinuing" base and that that base should grandfather programs operative prior to 1979 1980.

2. If, as we hear there may be, there is an attempt by the Bureau to merge other social service funding sources with the Indian Child Welfare Act program resources, we wish to go on record

Opposing such a move as we feel the Bureau has an obligation to increase the proportion of funding to off-reservation Native Americans, now only 26 percent, to at least 65 percent of the Indian Child Welfare Act related funds.

Opposing such a move as we feel the Bureau has a very poor record of advocacy for Native Americans in general, and probably will have less of a commitment to off-reservation Native Americans as they have never had to deal with any entities except federally recognized tribes.

3. Mandate that the Bureau follow its own regulations.

We wish to acknowledge that the Bureau—

Was under the gun time-wise as to the drafting of regulations and the start-up as set by Congress. However, there were internal delays and we see in the regulations many areas of delay—the three tier review and experienced them—the review of our appeal was to have been in our hands in April; we heard in May another violation of their own regulations.

Had no experience with competitive grant processes or off-reservation entities. However, we recommended in writing that they get in touch with agencies in H.E.W. – A.P.S. or A.N.A., and use their procedures. Certainly the poor program announcement and the lack of the availability of application packets indicates the Bureau did little to prepare adequately.

Had problems securing from O.M.B. an approval of its funding formula; this the Bureau staff indicated was mostly a time delay. We know O.M.B. is famous for that and they should be criticized severely. However, if this funding formula is an example of what the Bureau was giving O.M.B., we can understand O.M.B.'s reluctance to approve it, especially since it is virtually a give-away of $5.5 millions which will in no way improve the tragic conditions cited in the ACT. We feel this Committee should view this with alarm especially now because of the demand for fiscal accountability.

Needless to say, there is more on my mind, but time does not permit. I do thank the Committee for allowing Central Maine Indian Association to represent that one-quarter of the grantees – the off-reservation Native American grantees, but feel sad to have to speak for 65 percent of all Native Americans. We humbly request that the above cited problems be addressed quickly to prevent another tragedy for our People.

Thank you.

Attachments.

proposing that the color additive regulations be amended to provide for the safe use of grape color extract in food and drugs exempt from certification.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 28, 1979.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 79-[illegible] Filed 12-3-79; 8:45 am]

BILLING CODE 4110-03-M

Public Health Service

Home Health Services; Delegations of Authority

Notice is hereby given that there have been made the following delegation and redelegations of authority regarding home health services under section 339 of the Public Health Service Act (42 U.S.C. 255), as amended.

1. Delegation by the Secretary of Health, Education, and Welfare to the Assistant Secretary for Health, with authority to redelegate, of all the authorities, excluding the authority to issue regulations, vested in the Secretary under section 339 of the Public Health Service Act, as amended.

2. Redelegation by the Assistant Secretary for Health to the Administrator, Health Services Administration, with authority to redelegate, of all the authorities delegated by the Secretary to the Assistant Secretary for Health under section 339 of the Public Health Service Act, as amended.

3. Redelegation by the Administrator, Health Services Administration, to the Regional Health Administrators, Public Health Service Regional Offices, with authority to redelegate, of authority to make grants, other than grants that are national or multiregional in scope, to public and nonprofit private entities within their respective regions (a) to meet the initial costs of establishing and operating home health agencies and to expand the services available through existing agencies, (b) to meet the cost of compensating professional and paraprofessional personnel during the initial operation of such agencies or the expansion of service of existing agencies, and (c) to demonstrate the [illegible] of [illegible] and paraprofessional personnel to provide home health services as defined in section 1861(m) of the Social Security Act.

4. Redelegation by the Administrator, Health Services Administration, to the Director, Bureau of Community Health Services, Health Services Administration, with authority to redelegate, of all the authorities delegated by the Assistant Secretary for Health to the Administrator, Health Services Administration under section 339 of the Public Health Service Act, as amended, excluding the authorities specifically delegated to the Regional Health Administrators.

The above delegation and redelegations were effective on November 11, 1979.

Dated: November 26, 1979.

Frederick M. Bohen,

Assistant Secretary for Management and Budget.

[FR Doc. 79-[illegible] Filed 12-3-79; 8:45 am]

BILLING CODE 4110-85-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Child Welfare Act, Grant Fund Distribution Formula

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Title II of the Indian Child Welfare Act of 1978 authorizes the Secretary of the Interior to make grants to Indian tribes and Indian organizations for establishment and operation of Indian child and family service programs.

In order to ensure insofar as possible that all approved applicants receive a proportionately equitable share of available grant funds the distribution of these funds will be accomplished in accordance with the following formula. Each grant applicant approved under the provisions of 25 CFR 23 ranking and related criteria established by the Bureau of Indian Affairs will receive (a) a base amount equal to 2% of total grant funds available, or $15,000 whichever is greater. (b) The maximum amount of grant award cannot exceed an additional amount equal to the product resulting when the estimated clientele percentage of the total national Indian client population to be served by the grant applicant is multiplied by the total amount of grant funds remaining after (a) above is accomplished for all approved grant applicants. In the computation, the total national Indian client population figure will be based upon the best information available from the U.S. Bureau of the Census and the Bureau of Indian Affairs and other identifiable statistical resources.

If the grant applicant has requested less grant funds than would be provided under the above formula the approved applicant will be funded at the level specifically requested in the application.

Forrest J. Gerard,

Assistant Secretary—Indian Affairs.

November 27, 1979.

[FR Doc. 79-[illegible] Filed 12-3-79; 8:45 am]

BILLING CODE 4310-02-M

Indian Child Welfare Act, Title II Grant Applications

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Title II of the Indian Child Welfare Act of 1978 authorizes the Secretary of the Interior to make grants to Indian tribes and Indian organizations for establishment and operation of Indian child and family service programs.

The initial period for accepting grant applications is effective this date and will end January 18, 1980. Additional periods for submission of grant applications will be announced at a later date if funds remain available after the first grant application period. In the event it is necessary that specific timeframes be established for submission of applications so that all approved applicants can receive a proportionately equitable share of available grant funds.

Application materials and technical information may be obtained from Bureau of Indian Affairs offices serving the applicant. Applications for this initial application period will be accepted in anticipation of appropriated funds for Title II purposes. All grant application approvals will be subject to availability of funds.

Forrest J. Gerard,

Assistant Secretary, Indian Affairs.

[FR Doc. 79-[illegible] Filed 12-3-79; 8:45 am]

BILLING CODE 4310-02-M

Cabazon Band of Mission Indians, California, Ordinance Regulating and Taxing the Introduction and Distribution of Intoxicating Beverages

This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, Pub. L. 277, 83rd

= Effective [illegible] constitution the [illegible]

BEST COPY AVAILABLE

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

1-15-80

THIS IS TO VERIFY THE FIVE (5) COPIES OF THE MAINE INDIAN FAMILY SUPPORT SYSTEM FOR INDIAN CHILD WELFARE TITLE II GRANTS WERE SUBMITTED TO THE BIA SOCIAL SERVICES OFFICE (CENTRAL OFFICE) ON 15 JANUARY 1980. DEADLINE FOR SUBMISSION OF GRANT PROPOSALS IS 18 JANUARY 1980.

Joseph W. Holmes
Acting Chief.
Division of Social Services

69-083 O - 80 - 9

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
EASTERN AREA OFFICE
1951 Constitution Avenue NW,
Washington, D.C. 20245

IN REPLY REFER TO:

RECEIVED: FEB 2 5 1980
FEB 15 1980

Donna Loring, President
Central Maine Indian Association, Inc.
95 Main Street
Orono, Maine 04473

Dear Ms. Loring:

We regret to inform you that your grant application for funding under Title II of the Indian Child Welfare Act, entitled "Maine Indian Family Support System", has been disapproved.

Attached you will find the review comments which were the primary basis for our decision concerning your grant. Please review the comments and the questions concerning your application for future reference. Our staff will be available to answer any questions you may have. This does not prevent you from submitting an application during subsequent grant application periods.

You do have a right to appeal this decision (refer to 25 CFR 23, Subpart F for further information).

Sincerely,

Harry Rainbolt

It is the consensus of the application review panel that the grant proposal submitted by the Central Maine Indian Association does not meet the minimum standards for funding as imposed by Title II of the Indian Child Welfare Act. In rendering its decision, the panel identified the following areas of concern:

1. Strictly speaking, the grant application submitted to the Bureau of Indian Affairs is not an up-to-date assessment of conditions in the proposed service area; essentially, therefore, the reviewers were asked to assume that all data and documentation in the application package remained pertinent to the current situation. Apparently, the proposal was prepared some time ago for submission to the Department of Health, Education, and Welfare, and successfully competed in that agency for Title XX funding.

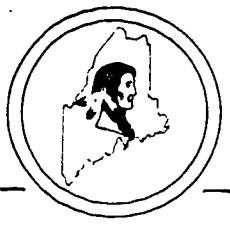
2. Certain items in the application, such as the research component and allowances for staff travel to Albuquerque, were justifiable in the original Title XX Research and Demonstration application, but have no revelance to the activity presently being proposed for funding under Title II of the Indian Child Welfare Act.

3. There was not sufficient evidence of support from the community, public agencies or other local service providers.

4. The proposal does not adequately discuss the extent to which the program duplicates existing services.

5. The program is somewhat weak in regard to staff qualifications.

The review panel noted that the general attitudes and philosophy conveyed in the writing of this proposal are commendable. Also acknowledged was the Association's good record as a provider of services. It is the panel's recommendation that this proposal be recast to reflect current goals and objectives that are specific to Title II of the Indian Child Welfare Act, and that the proposed budget be altered accordingly. A strong concentration on prevention and outreach is suggested.



Central Maine Indian Association Inc.

CENTRAL OFFICE
95 Main Street
Orono, Maine 04473
(207) 866 5587 / 5588

BRANCH OFFICE
615 Congress Street
Portland, Maine 04101
(207) 775 1874

Reply to Orono

March 5, 1980

Louise Zokan, Director
Indian Child Welfare Act Program
Bureau of Indian Affairs
Division of Social Services
1951 Constitution Avenue, N.W.
Washington, DC 20245

Dear Louise:

According to our right to appeal the decision of the Bureau to not fund our application, 25 CFR 23, Subpart F, we do now make that appeal.

Several of our reasons have to do with various aspects of the regulatory language (lack of clarity), program announcements, application review, etc.

- In the first place, the funding formula was variously interpreted by Bureau personnel. On two occasions Ray Butler variously interpreted to others in my hearing, and to me personally, what would constitute base funding to provide an adequate program:

  To the Penobscot planners the figure given was $165,000+;
  To me, two weeks prior to our filing our application, and in direct response to my asking for an interpretation of the formula announcement, he stated it would be $80,000 plus the .2 percent or $15,000, whichever is greater for an $95,000 sum. Now I am told that actually the project budget should not have exceeded $15,000 plus the .2 percent or $15,000 for a maximum of $30,000. Now you may understand why we put in for what we felt is an adequate program level of $95,000+. We suggest 100 programs @ $52,000 would be a more appropriate level of funding.

We even requested, in our cover letter, communications from your office if there were any questions which would influence "approval" or "disapproval." This was not done.

- Application review and program announcement problems can best be addressed by our responding to the issues cited in the letter of Harry Rainbolt's, February 15, 1980.

1. Current assessment of conditions: Apparently the reader is under the impression things have changed in the proposed service area. Our feeling and experience is that this is not strictly so. Officially no changes have taken place; in only a few isolated instances, and only since we filed our application, have our outreach specialists been called upon to impact cases involving Native American Child Welfare cases. Research was carefully cited showing that most state personnel attitudes are unfavorable in that they feel there is no cultural difference - "we treat all our clients the same" - between Indians and non-Indians; that there is no need to understand those differences. In fact, only 5 percent of the respondents seemed eager to understand, to learn about differences, or to work with Native Americans. Also, 0 percent suggested in-house hiring of Native Americans to state program. This amounts to a prejudiced reading.

2. Research and Travel items in the application seemed to have weighed heavily against the application and had no "relevance to the activity being proposed for funding" - the need for a "strong concentration on prevention and outreach." In point of fact:

   - whatever research was proposed was basically to stem from the evaluative process and comprised less than 3.7 percent of the program time. Our feeling is that any grant application which does not address evaluation/accountability in some way is truly not worth considering.

   - conference travel - "to Albuquerque" - amounted to a total of $3,000; an item which, upon consultation, could have been deleted. It was included as there were no specific program guidelines in the program annoucement.

Should the reader have adequately read the proposal he/she would have seen very clearly that all the Goals and Objectives spoke to prevention and outreach. In point of fact:

   - the program annoucement did not specify a program priority. (See attached).

   - program methods 2, 3, 4, 6 & 7 (leaving only 1, 5 & 8), accounting for 89.2 percent of the programmatic time, speak to prevention and outreach. (See other comments under 4).

Again a prejudiced, or at best poor, reading.

3. Support of the Community: We wish to apologize for the lack in this area, but feel it is not a significant cause for disapproval. We did file constituent and legislative letters of support. We had asked several agencies for letters of support, also. These responses were not delivered obviously. In two cases agency representatives asked passed the ball on to another person. In one of these cases the person responsible has been hampered in any communications with us due to orders from the State Attorney General's office to hold all efforts until the Land Claims case is settled. In another case -- letters were asked and have been delayed. We are making every effort to correct this. We do have one question:

*** How many letters of support constitute community support?

4. Duplication of Services: No direct discussion was made. However, the implications that can be gained from the case management guide (Three Phased Process, 4.3.3) indicates every attempt is to be made to utilize existing services. (See also point 1. above). Attached is our APPLICATION NARRATIVE AMENDMENT dealing with this subject: prevention and outreach. (See attached).

5. Staff Qualifications: Central Maine Indian Association has made every effort to secure as outreach specialists, the area in which we seem to be weakest as far as qualifications are concerned, Native Americans.

   First, the reason for doing so is obvious: we need a Native American:

   - who may know something about the "system" having used it him/herself.
   - who knows his/her People.
   - who has gained some training/experience in similar areas.

   Second, if we raised our qualifications, we would be unable to employ Native Americans:

   - Just over 10 percent of our People have attended or are attending post-secondary schools.
   - None, to our knowledge, have studied in the area of social services.

   Third,

   - With a 47 percent unemployment rate;
   - With a conviction that an "aware," "ready to learn" Native American is better at working with Indians than a non-Indians; we have chosen to hire and train our own para-professional personnel. If there is a weakness among our People, it is not in case work effectiveness, but in record keeping; and this is being changed by better reporting forms (more simplified) requiring less writing.

Now to the last paragraph of the letter. We thank the reviewers for their observations regarding

- the writing.
- the Association's good record.

We are concerned:

- How were we to know the "current" (underlining not ours) goals and objectives that are specific to Title II of the Indian Child Welfare Act?
- Who set them as prevention and outreach only?
- Where was this published?

Our reading of the "regulations" lists several appropriate objectives, from

- facilities for counseling and treatment of Indian families, temporary custody of Indian children to
- preparation of codes. (See attached).

We are, and would have been very happy to "recast" our application's funding levels.

We are pleased, Louise, you found the proposal "well integrated" and that "every component supported another." That is as it should be. Codes are essential to a program; foster homes are a must to underwrite emergency placement, etc. But if outreach of a preventive nature is the goal/objective, so be it! As to the finding of that piece to be funded, let us provide it. It is just a budgetary exercise as the majority of the program was already outreach/prevention. We would CUT:

- Numbers of personnel;
- Foster home recruitment and parent training;
- Code development;
- Staff development/training;
- Out-of-state travel (The Bureau better not require alot of grant compliance, etc., training unless it will provide travel costs - something we are not used to).
- Administrative allowances;
- Some evaluative responsibilities; and

*** • Concentrate on supervisory and outreach personnel and their immediate supports.

(SEE BUDGET CHART ATTACHED)

It is our understanding that with these suggested changes, and if an approval is given for funding our application will be placed last on the approved list. We object strenuously to being placed behind an application we know to be approved

- whose work program was cited as weak; we might add also, whose record of accountability for the delivery of its services is also notoriously poor.

These elements of a program are the heart/meat of a program, not peripheral elements to be criticized - research, conference budget items, (both so insignificant as to time and value of the program), duplication of services, staff qualifications, etc. We feel we carefully detailed our "work" and "evaluation" (accountability) efforts. / We also notice no mention of them was made. / Again, we feel this is evidence of a prejudiced reading of the application.

If the above is a true understanding, such a penalization is uncalled for, especially in the light of the Bureau's failure to

- publish their program priorities clearly.
- make extremely clear the funding formula.

  in the light of the Bureau's review process which made

- "peripheral" items more essential to the review ranking.
- no consultation with this applicant, but did so with others to make needed changes.
- the definition of an adequate program impossible.

  in the light of the Bureau's not demanding

- the disqualification of a reviewer who obviously was familiar with our earlier R & D application; something we were promised would be done.

We are sorry for the extent of this letter, but as we are making an appeal we are "putting our cards on the table." At the same time we are trying to address those deficiences that need change, and providing you with a revised financial application outline.

Please, when you receive this and if you have any further questions, we ask you to call.

Sincerely,

David L. Rudolph

David L. Rudolph
Administrative Assistant

DLR/bjc

Enclosures

3.4. Methods: Duplicative -

By experience, and by the revelations of our research under the NORTH-EAST INDIAN FAMILY SUPPORT grant, Central Maine Indian Association is convinced client advocacy is the activity of choice for our outreach specialists. In no sense of the word can Central Maine Indian Association develop a duplicate service system for our constituency:

- Many viable services exist already.
- Cost of such an effort is prohibitive.

However, if any duplication can be said to exist, it would be solely in the area of an outreach case work effort. Nevertheless, the agency does not see this effort as duplicative for the following reasons:

- Case advocacy is a must for our People:
  - Discrimination is strong against Indians in Maine (home of the landmark Land Claims Case).
  - Functional illiteracy in dealing with non-Indian bureaucratic "white-tape" is a major barrier to services.
  - Low level communication skills and a parallel unwillingness to understand our Peoples' culture differences is another major barrier to successful case resolutions.
- The lack of the readiness of "child welfare" services to hire Native Americans to deal with Native Americans is obvious.
  - The hiring of middle-class raised and trained college graduates is the rule.
  - In Maine just over 10 percent of our People have attended or are attending post-secondary schools. To our knowledge none have taken work in the field of social work.
  - Therefore, the lack of understanding and the resulting communications gap.
- Emotional supports to this culturally different People are lacking:
  - Many have moved to find economic security only to find few who "understand" them around them.
  - Although in many instances enclaves of other Indians exist, there are not as many of the close ties of the "extended" family present.

Thus, our basic service methodology will not be direct, or duplicative, services; but advocacy, or liaison, services of a preventive/outreach nature. In this effort Native Americans will work with the social services, "child/family" welfare service, personnel on behalf of Native American clients to:

- Assure clients do follow-up agency referrals as required.
- Assure appropriate communications.
- Provide "emotional" supports in stressful experiences --
  - when seeking help.
  - when appearing in court.
  - when faced with other family troubles -- loss of work, hunger, alcoholism, loss of shelter, etc. all of which can be interpreted as neglect.

CENTRAL MAINE INDIAN ASSOCIATION

95 Main Street
Orono, Maine 04473

MAINE INDIAN FAMILY SUPPORT SYSTEM

FY '80 BUDGET

ITEM	AMOUNT
PERSONNEL	
Program Director	$13,000
Outreach Specialist	9,360
TOTAL SALARIES	22,360
Fringe - 16%	3,578
TOTAL PERSONNEL COSTS	$25,938
EXPENSES	
In-State Travel - 393 ms/mo/worker at 18.5¢/m	$ 1,747
Telephone - $75/mo/worker	1,800
Training - $250/worker/year	500
TOTAL EXPENSE COSTS	$ 4,047
TOTAL PROGRAM COSTS	$29,985

5 March 1980

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

RECEIVED MAY 0 5

MAY 1 1980

Ms. Donna Loring
President, Central Maine Indian
Association, Inc.
95 Main Street
Orono, Maine 04473

Dear Ms. Loring:

This letter will serve to acknowledge your correspondence of March 5 in which you appeal the decision of the Eastern Area Director to disapprove your grant application to receive funds under the Indian Child Welfare Act of 1978.

It has been determined this proposal, as written, does not best promote the purposes of Title II of the Act, as defined in 25 CFR 23.22. Examples of non-compliance with the regulations and/or the Application Selection Criteria as stated in 25 CFR 23.25 are as follows:

1. While the grant application appears to meet the basic intent of the Act, there is little quantitative or qualitative narrative which clearly states the scope of work to be performed or the goals to be accomplished.

Moreover, the basic intent of the proposal does not convey the policy of the Act as stated in 25 CFR 23.3 which is "to protect Indian children from arbitrary removal from their families and tribal affiliations by establishing procedures to insure that measures to prevent the breakup of Indian families are followed in child custody proceedings", in order "to insure the protection of the best interest of Indian children and Indian families."

2. Too often, the application refers to the term "support"; yet, while some methodology can be tracked within the framework of the GANTT chart process, little narrative can be found within the proposal which develops the techniques or methods of "support."

3. The statement of need appears fragmented, and while some data is reflected at points within the proposal, no salient conclusions can be drawn concerning the actual population(s) to be served.

4. The application does not discuss proposed facilities and resources in detail. For example, it is not clear how $7,500 will be spent in the line budget item "housing assistance" support.

A second area of concern is the distribution of time for the Director of Program's, in that, it would appear that less than 100% of time will be spent in directing the Indian Child Welfare Act Program.

5. The proposal presents minimal narrative as to the applicant's in-depth underatanding of social service and child welfare issues, and culturally relevant methods of working toward the resolution of issues which will prevent the breakup of Indian families.

6. The proposal contains budget items which are not reasonable considering the anticipated results. For example, $4,125 for travel to out of area conferences which are not germane to the Indian Child Welfare Act; housing assistance in the amount of $7,500 needs justification, and travel for Director, Planner, and Board Members to Washington, D.C. in the amount of $2,625 seems extravagant.

We find the proposal does not meet the minimum criteria for funding under Title II of the Indian Child Welfare Act. Therefore, the disapproval decision of the Eastern Area Director is upheld. Under redelegated authority from the Secretary of the Interior, this decision is final for the Department.

Sincerely,

Deputy Assistant Secretary - Indian Affairs

MEMO: Re Federal Injunction Effort

TO: Donna Loring, Executive Director
Board of Directors

FROM: David L. Rudolph, Administrative Assistant

DATE: 14 May 1980

Per instructions from Donna I followed up on a contact she had discovered regarding a Federal Injunction effort.

The Contact was Allen Parker at the Indian Lawyers Training Program
Washington, D.C.
202 466 4085

The contact was made today.

In coversation the following points were made, following a brief description of our situation and relationship with Bureau of Indian Affairs, specifically in regard to our M.I.F.F.S. application.

First: we must decide under what authority - reasons - an injunction was to be made.
It would be an Administrative Law Suit.
It would not be because of civil rights violations.
It would be lodged against the Secretary of the Interior.

Second: we must show that we have exhausted all other remedies.
We have made an appeal and been turned down. That has happened.

we must allege mismanagement of the allocation of accounts.
With that we may have a problem becsuse they will show that the management was left to the discretion of the agency.
We would have a problem showing that the agency acted with complete disregard for reasonable considerations.

Allen was not encouraging and even suggested that a greater potential for action lies in the political process; for instance, and appeal to Congressman Yeates, Chairman of the House Appropriation Committee.

We would have to contact a local lawyer to handle; costs were asked, but no response was given.

I asked if there were others who had complained, He said, yes; often that there was no meaningful guidance in the application effort, which is the same complaint we have.

RECOMMENDATION: Forget such an effort and appeal to Congressman Yeates and our Federal legislators. The latter is done, we shall accomplish the former immediately.

DLR

Senator MELCHER. The hearing is adjourned. The record will remain open for 10 days.

[Whereupon, at 12:10 p.m., the hearing was adjourned.]

[Subsequent to the hearing the following letters were received for the record.]

INTERNATIONAL CHILDREN'S PROGRAM,
Holton, Kans. July 3, 1980.

Senator JOHN MELCHER,
Chairman, Select Committee on Indian Affairs,
U.S. Senate,
Washington, D.C.

Dear SENATOR MELCHER: This letter is in response to the committee hearing on implementation of the Indian Child Welfare Act, Public Law 95-608.

The Inter-Tribal Children's Program serves the four federally recognized tribes in the state of Kansas. The Iowa Tribe of Kansas and Nebraska, the Sac & Fox of Missouri, the Kickapoo in Kansas and the Prairie Band of Potawatomi Tribe of Kansas.

The program was initially funded under Indian Self-Determination Act, Public Law 93-638. In addition, we were funded with ongoing child welfare funds from the Area Office of the Bureau of Indian Affairs in Anadarko, Oklahoma. This funding provided for program operation from July 1, 1979, through February 1980. Funding for March 1980 through September 1980 was projected in our grant application for Title II of Public Law 95-608.

Our program has a unique relationship with the state of Kansas. We are currently licensing our own Indian foster homes statewide serving all Indians in the state of Kansas. The state funds our foster homes. We are working closely with the various courts located in the counties within the state. We are actively working toward full implementation of the Indian Child Welfare Act. The Indian Child Welfare Act has resulted in a professional inter-tribal program. It is imperative that for continued existence, funding be available.

The following is a list of possible barriers to implementation of the Indian Child Welfare Act and the Inter-Tribal Children's Program:

1. Funding for the Inter-Tribal Children's Program, under Title II, was budgeted for the remainder of FY-80 (March 1 through September 30, 1980). We were informed that we have to adjust our budget for the months of June through May 1980. We borrowed funding to carry us through March 1, 1980 to July 1, 1980, total cost of $17,000.00. This is to be reimbursed from Title II monies. Our Title II grant was approved for $60,000.00—$15,000.00 for each tribe participating in our program. This leaves us a remainder of $40,000.00 to fund program activities for eleven months. Funding is the number one barrier.
2. Population definition—We were advised by the Area Office to use Public Law 93-638 population definitions, which is using only those numbers within reservation boundaries. We are actully serving all Indian youth within the state. There needs to be a clarification of population included in Public Law 95-608 funding.
3. There needs to be a network established to coordinate various federal agencies so alternative funding can be identified—so total program activities are not dependent upon Bureau of Indian Affairs funding.
4. Technical assistance in direct service activities is needed for implementation of the Act (Public Law 95-608)—various programs are in waiting (residential treatment facility, group home for adoptive and foster children, family services recreational activities, etc.). Funding needs to be appropriated to support tribes in program development, technical assistance from federal agencies and or both.
5. The states need funding to develop legislation in support of implementing the Act (Public Law 95-608). Federal dollars could support these activities or federal pressure directing states to cooperate with the tribes.

These are but a few of the concerns that we wanted to share. It is our position that if Public Law 95-608 is indeed going to succeed and serve the tribes and Indian communities, strengthen the Indian families and especially our Indian youth, then some legislative action is necessary.

Thank you.

Sincerely,

JAN CHARLES GOSLIN, L.M.S.W.,
Director, Inter-Tribal Children's Program.

SISSETON-WAHPETON-SIOUX TRIBE OF THE
LAKE TRAVERSE RESERVATION,
SISSETON, S. DAK., *August 8, 1980.*

Senator MELCHER,
Select Committee on Indian Affairs,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MELCHER: This letter is a follow up to the recent hearing held by the Select Committee on Indian Affairs. We wish to present the following issues for the Committee's consideration:

1. The impact of the Indian Child Welfare Act.
2. The role of the Bureau of Indian Affairs in funding and providing technical assistance under the Act.
3. The appropriation of funds under Title II of the Act.
4. The allocation process for funding under the Act.

The Indian Child Welfare Act is the single most important piece of federal legislation affecting Indian families and children. For the first time the federal government has taken a positive view of the rights and the responsibilities of Indian people over Indian children.

The impact of the law on the Sisseton-Wahpeton Sioux Tribe has been positive. The Tribe has developed an excellent working relationship with the state court on child custody matters (this has been in spite of conflicts on other matters). This cooperation has existed at both the local and state levels.

This law has provided the Tribe with the responsibility for the destiny of all Tribal members. This responsibility (an inherent right) is taken very seriously. In every case involving the possible transfer of a child back to the Tribe every effort is made to determine what action will be in the best interest of the child.

The biggest problem faced by the Tribe in implementing the law has been the lack of funds for program development. The lack of funds has hindered the development of programs at Sisseton. On other reservations where some type of Tribal social service system hasn't existed; it has been a much greater detriment to full implementation of the law.

The working relationship between the Tribal social services staff and Bureau social services staff at the Agency, area and central office levels has been very positive. The Bureau social services employees have usually been cooperative and helpful. A problem always associated in working with the Bureau is that of funding. Nobody ever seems to know what the money situation is.

The problems we've encountered with the Bureau relate primarily to problems of funding. One of the most significant moves by Congress in relation to this law would be the funding of Title II of the Act. Without a commitment to funding, Congress is setting Indian people up for a repeated cycle of unmet expectations and broken promises. The changes which the law calls for requires a commitment of funds and time. The development and and full implementation of these programs requires a minimum of ten years. As yet Congress has never appropriated any funds to carry out the law.

The allocation process for funding under the law was very confusing. The confusion on this matter stemmed from not knowing how much money would be available or how many applications would be made for the difficult funds. If Congress would appropriate a definite figure it would make it much easier for the Bureau of Indian Affairs to establish its allocation guidelines. Writing proposals under this program was very difficult because there was no way that the Bureau could indicate exactly how much money would be available.

It seems that funds should be somewhat competitive, but given the nature of this Act; all Tribes wishing to submit an application should be funded unless the proposal is so incomplete that it makes absolutely no sense. Although we have been very satisfied with the cooperation we have received from the Bureau; the Bureau should consider more aggressive offerings of technical assistance to those Tribes who have not yet had the opportunity to develop programs.

I thank you, Senator and hope that some positive value comes of the hearings.

Sincerely,

DOROTHY GILL,
Director, Human Services Department.

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