



## UNITED SOUTH AND EASTERN TRIBES, INC.

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USET Resolution No. 2000:69

### ICWA IMPLEMENTATION ISSUES FOR USET TRIBES

- WHEREAS**, United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprising twenty-four (24) federally recognized tribes; and
- WHEREAS**, the actions taken by the USET Board of Directors officially represent the intentions of each member tribe, as the Board of Directors comprises delegates from the member tribes' leadership; and
- WHEREAS**, the National Congress of American Indians (NCAI) is sponsoring an Indian Child Welfare Act (ICWA) Forum in Juneau, Alaska on June 24-25 to discuss implementation issues surrounding ICWA and proposed legislation; and
- WHEREAS**, the USET Board of Directors desires to put forth its thoughts and experiences working with ICWA; and
- WHEREAS**, a document entitled "ICWA Implementation Issues for USET Tribes" (attached) was developed by the Social Services Committee meeting; and
- WHEREAS**, this document identifies ICWA issues in the USET region for the purpose of having these issues presented at the NCAI sponsored ICWA Forum in Juneau, Alaska; therefore, be it
- RESOLVED** that the USET Board of Directors supports the presentation of this document at the NCAI sponsored ICWA Forum in Juneau, Alaska.

### CERTIFICATION

This resolution was duly passed at the USET Semi-Annual Board Meeting, at which a quorum was present in Houston, TX Thursday, June 8, 2000.

Keller George, President  
United South and Eastern Tribes, Inc.

Beverly Wright, Secretary  
United South and Eastern Tribes, Inc.

**UNITED SOUTH AND EASTERN TRIBES  
SEMI-ANNUAL MEETING  
SOCIAL SERVICES COMMITTEE  
JUNE 7, 2000**

**ICWA IMPLEMENTATION ISSUES FOR USET TRIBES**

**ISSUE NUMBER ONE -Transfer of jurisdiction.**

**:What is working:**

- Some tribes are able to retain jurisdiction of cases while the state maintains responsibility for providing services such as case management, etc.

**What is not working:**

- Many tribes would like to ask for transfer of jurisdiction, but may be unable to provide the level of services available through the state system. Often the states want to “cut ties” to the child once jurisdiction is transferred, thus cutting off state sponsored services.

**ISSUE NUMBER TWO - Notice to tribes in involuntary placements.**

**What is working:**

- No comments from the committee.

**What is not working:**

- Several states make little or no effort to notify tribes regarding involuntary custody proceedings.
- When notice is given to tribes it is often not received in a timely manner. Therefore tribes are often not able to intervene until much time has passed or adoption proceedings are underway.
- Information supplied to the tribes is often insufficient to make a determination regarding a child’s membership or eligibility for membership.
- Notice of involuntary proceedings are often sent to the wrong person, tribe or department.

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**ISSUE NUMBER THREE - Active efforts.**

**What is working:**

- Some states work very well with the tribes to reunify Indian children with their biological parents. An example presented to the committee was the State of Connecticut and the Mohegan Tribe.

**What is not working:**

- There is insufficient documentation in most cases. It is difficult to determine if 'active efforts' have truly been made by the state.

**ISSUE NUMBER FOUR - Expert witness.**

**What is working:**

- Most states within the USET region accept and utilize tribally qualified expert witnesses regardless of their educational background.

**What is not working:**

- No comments from the committee.

**ISSUE NUMBER FIVE - Foster care placement preferences.**

**What is working:**

- Many states in the USET region will ask tribes to place Indian children within their foster care system.
- Foster homes utilized and/or licensed by the tribes are usually accepted by the child welfare agency of the particular state.
- Most states in the USET region accept tribally licensed foster homes.

**What is not working:**

- Often state standards are so stringent that they exclude many good tribal foster homes.
- State standards vary and are inconsistent when dealing with tribes.
- Most states refuse to accept a tribal foster home for consideration if the tribe in question is located in a different state.

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**ISSUE NUMBER SIX - Adoptive placement preferences.**

**What is working:**

- Some tribes are being contacted by the private sector when an Indian child is being placed for adoption.

**What is not working:**

- Some states refuse to accept a home study that has been completed by a tribal Social Services department.
- Tribes are often not afforded full faith and credit in regards to tribal adoption orders.

**ISSUE NUMBER SEVEN - Termination of parental rights.**

**What is working:**

- No comments from the committee.

**What is not working:**

- Time lines for terminating parental rights vary between states and tribes.
- Some tribes will not terminate parental rights. This results in conflict between the state and the tribe if children are in the custody of the state.

**ISSUE NUMBER EIGHT - Existing Indian family.**

**What is working:**

- This is not a recognized problem for USET area tribes at this time.

**What is not working:**

- Some states have already used the “existing Indian family exception.” In the future this may present a huge challenge to not only the USET tribes, but all Indian tribes.

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**ISSUE NUMBER NINE - Voluntary placements.**

**What is working:**

- Private agencies are usually providing notice.
- Tribal caseworkers can work with Indian parents to develop options.
- Indian parents see tribal Social Services as a resource for voluntary placements.

**What is not working:**

- Some states as well as private agencies are unsure what to do regarding sending notice to the tribes. They do not know where to find contact information.

**ISSUE NUMBER TEN - Funding.**

**What is working:**

- Although states do not provide financial assistance, they usually try to provide services when money is passed through.
- Many tribes report negotiating with their state to provide services and/or staff within the tribal community.

**What is not working:**

- Tribes need more money.
- Tribes would like federal Social Security Act funds (Title IV-E, Title IV-B, Title XX)
- Tribes do not want to risk losing BIA funding to receive Department of Health and Human Services funding.
- States are not willing to share funding with tribes.
- Oftentimes tribes must beg the states for services and funding.

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**ISSUE NUMBER ELEVEN - Intervention.**

**What is working:**

- Most tribes are willing to perform courtesy investigations and home studies for other tribes.

**What is not working:**

- Some states refuse to give full faith and credit to tribal court orders.
- States often refuse to honor ICWA placement preferences.

**ISSUE NUMBER TWELVE - Miscellaneous.**

**What is working:**

- Tribes often accept a child for services for ICWA purposes (not enrollment) as “an Indian child” when the child may not be eligible for enrollment with a specific tribe, but may be a descendant of several tribes.

**What is not working:**

- Indian children who are not technically eligible for ICWA protections are falling through the cracks.