Session 7

Placement Preferences for Foster Care and Adoption

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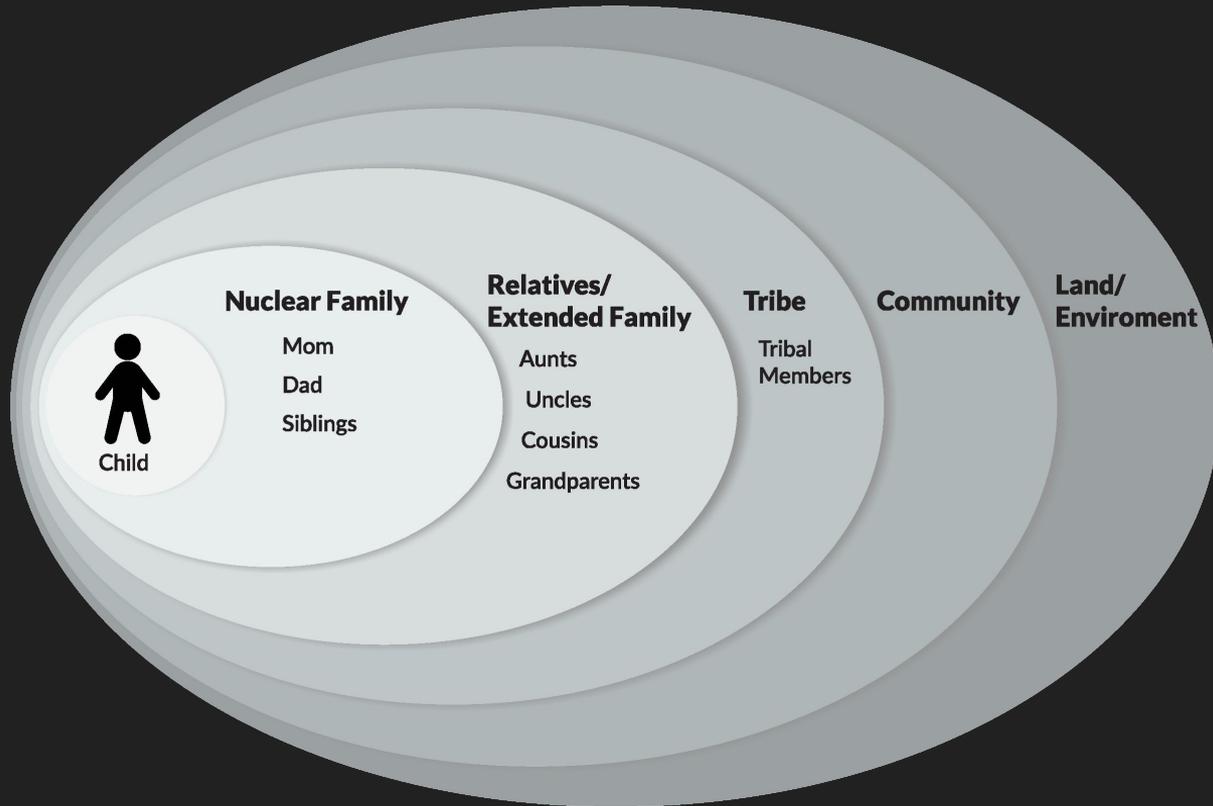
Foster Care Placement

Foster placement criteria

- Least restrictive setting which most approximates a family
- Where child's special needs may be met
- Reasonable proximity to home, extended family or siblings

Foster Care order of preference

1. Member of child's extended family
2. Foster home licensed/approved/specified by Tribe
3. Indian home licensed by State
4. Institution approved by Tribe or operated by a Native organization with program suitable to meet child's needs

ICWA §1915(b); 25 CFR 23.131(a)(3) and (b); ICWA §1903(1)(i)

Extended Family Member

- "Extended family member" is as defined by tribal law or custom
- Default definition under ICWA: child's grandparent, aunt or uncle, adult brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent
- ICWA definition includes both the Native and non-Native sides of the family (if applicable)
- No differentiation based on closeness of relationship between child and extended family member

ICWA §1903(2)

Adoption Placement Preferences

- Adoption order of preference (in descending order):

  1. Member of child's extended family

  2. Other members of child's Tribe

  3. Other Alaska Native or American Indian family

- If none of the listed preferences are available or appropriate, child may be placed for adoption in non-Native home.

ICWA §1915(a)

Foster Care and Adoption Placement Preferences

- If Tribe establishes different order of preference for foster care or adoptive placements by resolution, the Tribe's order must be followed so long as placement is least restrictive setting appropriate to particular needs of child

- Where appropriate, the preference of the child or the parent should be considered in foster care or adoptive placements

- Prevailing social and cultural standards of the Native community are to be applied in assessing whether a preferred placement is suitable.

ICWA §1915(c) and (d)

Placement Preferences: "Good Cause"

- Placement preferences must be followed unless clear and convincing evidence of "good cause" to contrary
- ICWA Regulations: "good cause" should be based on:
    1. Request of parents
    2. Request of child
    3. Presence of sibling attachment
    4. Extraordinary needs of child; or
    5. Unavailability of placement after diligent search
- May not be based on socioeconomic status
- May not be based solely on ordinary bonding in placement made in violation of ICWA

ICWA §1915(a),(b); 25 CFR 23.132

Placement Consideration: Siblings

- ICWA:
  - Criterion in foster care placement is proximity to siblings
  - Ability to maintain sibling relationship can be good cause basis to depart from preferences
  - Taking steps to keep siblings together is "active effort"
- State Law:
  - OCS must make reasonable efforts to place siblings together (if together when taken into custody)
  - Court shall recognize presumption that maintenance of sibling relationship is in child's best interests

25 CFR 23.131(a)(3), 23.132; 23.2; AS 47.10.080(p),(w); AS 47.14.100(r)

OCS Duties: Placement

Alaska Supreme Court:

- Make placement decisions that comply with ICWA
- Identify all potential preferred placements early in a case
- Enable and assist tribal members to seek placement early in cases

ICWA: Keep a record of all placements with evidence of efforts to comply with order of preference

State law:

- Conduct relative searches throughout case
- Document searches in casefile
- Communicate with relatives about rights to request temporary or permanent placement

ICWA §1915(e); AS 47.10.080(s), .088(i), .142(i)

Others' Duties: Placement

- **GALs** required to identify possible placement options

- **Parents** required to give names & contact information for relatives

- **Intervening Tribes** required to give names & contact info for extended family and other potential placements

- **Judges** required to inquire about efforts to follow placement preferences at every court hearing at which court is authorizing removal or continuing a previous order authorizing removal

CINA Rules 11(f)(2)(B), 8(c), 10.1