

***Improving Compliance with the Indian Child Welfare Act Discussion Guide***

This tool, adapted from the California American Indian Enhancement Project’s (CAIEP) “Implementation Toolkit,”[[1]](#footnote-1) is designed to generate discussion among members of a judicially-led collaborative about current practices, including challenges and successes in complying with ICWA. Judges should set meetings with child welfare stakeholders and tribal partners, if any have been identified, to discuss efforts at collaboration, training and resources, and court practice. This initial step will help identify priority areas for improvement that can be targeted in an action plan designed to improve ICWA compliance.

**Meaningful and Ongoing Collaboration**

**Discussion Question**  **Response Priority**

*(to include discussion of strengths & challenges)*

Has a contact person (e.g., ICWA designated agent) been identified for *each* of the local tribes?

Is the court making efforts to identify new stakeholders who may have an interest in the welfare of Native families?

Is the court engaged in relationship building with local tribal representatives?

Are there tribal/state ICWA workgroups to increase communication and collaboration?

Are there tribal/state agreements to increase tribal access to financial resources?

**Enhance Understanding Through Training & Education**

**Discussion Question**  **Response Priority**

*(to include discussion of strengths & challenges)*

Have all the judicial officers been trained on the ICWA?

Have all stakeholders (attorneys, social workers, etc.) been trained on the ICWA?

Are all stakeholders familiar with state Indian child law requirements?

Have judicial officers been trained on historical context of ICWA and historical trauma?

Have stakeholders been trained on bias and cultural awareness/understanding in working with Tribes?

**Enhance Understanding Through Training & Education: Resource Awareness**

**Discussion Question**  **Response Priority**

*(to include discussion of strengths & challenges)*

Is there a child protection worker who is an ICWA specialist?

Is there a designated liaison that helps make connections between CPS and the Tribes?

Are there culturally appropriate services available to Native families in your jurisdiction?

Are there forums to discuss other resources and means to identify additional resources in your jurisdiction or state?

Other training and resource related issues

**Assessing Court Practice: ICWA Applicability**

**Discussion Question**  **Response Priority**

*(to include discussion of strengths & challenges)*

Does the court make culturally appropriate and respectful inquiry of ICWA applicability at every preliminary protective hearing?

Is the court directly asking the parents about their Native heritage?

Is there a designated space on the minute order for findings regarding ICWA inquiry and ICWA applicability?

Does the court have a protocol in place for when ICWA is *unknown?*

Is the court making a finding at *every* preliminary protective hearing regarding ICWA applicability?

**Assessing Court Practice: ICWA Compliance**

**Discussion Question**  **Response Priority**

*(to include discussion of strengths & challenges)*

Has the court identified potential qualified expert witnesses who could testify in ICWA cases?

Is there a designated space on the minute order for a finding of clear and convincing evidence of emotional or physical damage?

Is there a protocol in place for delivering notice to the tribes in a timely fashion (i.e., at least 10 days prior to scheduled hearings)?

Is there a designated space on the minute orders (or alternative form) for the court to make a finding of active efforts and CPS to describe those efforts?

Is there a designated space for documentation of active efforts (for both CPS and court findings) in the case file?

**Assessing Court Practice: Compliance & Engagement**

**Discussion Question**  **Response Priority**

*(to include discussion of strengths & challenges)*

Is there a protocol in place for involving the tribe in case planning? Is the tribe involved in case planning? If so, how?

Are tribes meaningfully participating in hearings?

Is the court ensuring that every child and family receives culturally appropriate services?

Is data being collected in order to identify the court’s performance regarding ICWA compliance?

Are all aspects of ICWA compliance being clearly documented in the case file?

1. For more information, please see the American Indian Enhancement Project website at <http://calswec.berkeley.edu/CalSWEC/AIE/AIE_home.html> [↑](#footnote-ref-1)