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.
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—NOV. 8, 1978

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.

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."

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—

(1) that clause 5, 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;

(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-tribal foster and 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.

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 1902.

(1) "child custody proceedings" 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;

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

(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.

43 USC 1606.

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" 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 step-parent.

(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);

(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 tribe with which the Indian child has the most significant contacts;

(6) "Indian custodian" means any 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 7(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended;

(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 an Indian country as defined in section 1131 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 ordinances 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

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 not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of a determination, supported by 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, the court shall notify the parent or Indian custodian and the tribe or the Secretary, upon certification of the presiding Judge, shall pay services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(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) Any 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.

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 an 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) Any party seeking to effect a foster care placement or termination of parental rights 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. Where such documents contain information the disclosure of which is likely to result in serious emotional or physical damage to the child, 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, 1961 (42 Stat. 419; 25 USC 1911).

(e) 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 provide the requisite notice to the parent, or Indian custodian, and the tribe or the Secretary.

(f) 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, 1961 (42 Stat. 419; 25 USC 1911).

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-
SEC. 105. (a) In any adoptive placement of an Indian child in accordance with section 103 of this Act, State law, a preference shall be given, in the absence of good cause, to an extended family; to (1) a child of the Indian child's tribe or family; (2) another Indian tribe or family; or (3) any other Indian tribe or family.

(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 a reasonable proximity to his or her home or community. 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:

(1) a member of the Indian child’s extended family;

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

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

(4) 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 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 the Indian child or parent shall be considered: Provided, That where such agency shall give weight to such desire in applying the preference.

(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 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 authorized. The records shall be made available to the Secretary or the Indiantribe’s record.

Sec. 106. (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or of the 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.

(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 Indian child and the biological parent or Indian custodian from whom custody was obtained. 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 known from the individual's tribal relationship.

Sec. 108. (a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 14, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73), 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, the Secretary shall present to the Secretary for approval a petition to reassume jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) 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 the assumption of jurisdiction by the tribe;

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

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

(c) 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.

(d) 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 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.

(e) 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.

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, 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
Section 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 the 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.

Section 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.

Section 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 ensure 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.

Section 113. None of the provisions of this title, except sections 101(a), 103, 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**

Section 901. (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, after-school 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 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.

Section 902. 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, after-school 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 1931.
(b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 8, 1978 (42 Stat. 208), as amended.

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).

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—

(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 ensure 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.

Final decree, information to be included.
25 USC 1951.

Effective date. Rules and regulations.
25 USC 1952.

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:

Oct. 15, Senate concurred in House amendments.

Report to congressional committees.

Copies to each State.
25 USC 1962.

MEMORANDUM

June 28, 1980.

To: John Melcher, Chairman
From: Peter Taylor, Spec. Counsel
Subj: Oversight 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 tribes.

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 grantees, 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 apparently 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.
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 understate the service population or "case load", and (2) it appears to understate 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 for 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:

<table>
<thead>
<tr>
<th>FY 1979</th>
<th>FY 1980</th>
<th>FY 1981</th>
</tr>
</thead>
<tbody>
<tr>
<td>Welfare Grants ($ in thousands)</td>
<td>$51,101.0</td>
<td>51,101.0</td>
</tr>
<tr>
<td>General Assistance</td>
<td>13,590.0</td>
<td>13,590.0</td>
</tr>
<tr>
<td>Child Welfare</td>
<td>3,800.0</td>
<td>3,800.0</td>
</tr>
<tr>
<td>Child Welfare Grants</td>
<td>68,491.0</td>
<td>70,991.0</td>
</tr>
</tbody>
</table>

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:

<table>
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<tr>
<th>FY '79</th>
<th>FY '80</th>
<th>FY '81</th>
</tr>
</thead>
<tbody>
<tr>
<td>CW Children per month</td>
<td>3,300</td>
<td>3,300</td>
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</tbody>
</table>

Unit costs:

<table>
<thead>
<tr>
<th>CW $ per child per month</th>
<th>FY '80</th>
<th>FY '81</th>
</tr>
</thead>
<tbody>
<tr>
<td>343.18</td>
<td>343.18</td>
<td>262.57</td>
</tr>
</tbody>
</table>

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 aberration 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.
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

25 CFR Part 13

Tribal Reassumption of Jurisdiction Over Child Custody Proceedings

July 31, 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. 1914.

DATE: This rule becomes effective August 30, 1979.

FOR FURTHER INFORMATION CONTACT: David Elkins, Office of the Solicitor, Division of Indian Affairs, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240, 202-343-6367.

SUPPLEMENTARY INFORMATION: The authority for issuing these regulations is contained in 25 U.S.C. 1972 and 291 DM. This new part was published as proposed rule on April 23, 1979, 4 FR 20460. The comment period on the proposed rules closed on May 22, 1979. Comments were received from several Indian tribes and persons who were interested in the program.

A. Changes made due to comments received:

(1) Section 312.1 has been modified to reflect the variety of proposed amendments authorized by the Indian Child Welfare Act. Where both the tribe and state currently assert exclusive jurisdiction on 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 assert 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. 1971.

(2) In response to a comment, the phrase "in accordance with the Child Custody Act, 25 CFR Part 13" in the jurisdiction clause has been struck. This phrase is too vague. The court has been cited in the interest of Congress, which is clearly stated in the legislative history, that the right to reassumption be available to Oklahoma tribes.


(4) In response to a comment, a specific provision is made about Oklahoma to reflect the intent of Congress, which is clearly stated in the legislative history, that the right to reassumption be available to Oklahoma tribes.

(5) It is important to note that the phrase "a tribe may reassume partial 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. 1914." is not intended to include the phrase "a tribe may reassume partial 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. 1914." as broad as the definition of "tribal court" in 25 U.S.C. 1903(12). All comments that a specific tribe may have difficulty determining how many tribal members there are, the boundaries of their reservation area or how many Indians live on the reservation, 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.

(6) In response to a comment, the phrase "the proper court." A "clear and definite" description of the boundaries will suffice for that purpose.

(7) Some commenters objected to the use of the term "tribal court" 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 "tribal administrative" body. Rather than a "tribal court" and replacing the phrase "tribal administrative body." Accordingly, that phrase has been changed to "tribal administrative body." (8) Some commenters said they thought the phrase "persons with a legitimate interest in a child custody proceeding" was too vague or that those persons who would be able to ascertain from the tribe whether a particular child is a member might 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 "appropriate in an Indian child custody proceeding.

(9) In response to comments that made due to comments received.

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. 1914.

DATE: This rule becomes effective August 30, 1979.

FOR FURTHER INFORMATION CONTACT: David Elkins, Office of the Solicitor, Division of Indian Affairs, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240, 202-343-6367.

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(9) In response to comments that made due to comments received.
reservation is unequivocal if the tribe is petitioning only for relevant information, for federal agencies are required to provide information that is available to the public. If the reservation indicates otherwise, then the information is not available to the public. The text of the reservation is not ambiguous as to whether the tribe is petitioning for information necessary for the federal agencies to perform their functions.

The Court also held that the tribe's petition for the information was not timely because it was filed after the statute of limitations had expired. The statute of limitations for federal agencies to provide information is 2 years from the date the tribe was notified of the information's availability. The tribe notified the agencies in 1979, but did not file its petition until 1983.

The Court ruled that the tribe was not entitled to the requested information because it had not satisfied the requirements for obtaining the information. The tribe was required to show a specific need for the information and to provide a description of the information it was requesting. The tribe did not provide a description of the information it was seeking, and it was therefore not entitled to it.

The Court's decision was based on the premise that the tribe had not satisfied the necessary requirements for obtaining the information. The tribe's petition was not timely, and it did not provide a description of the information it was seeking. These requirements were necessary to ensure that the agencies could effectively provide the information requested. The tribe was therefore not entitled to the requested information.
PART 13—TRIBAL REASSUMPTION OF JURISDICTION OVER CHILD CUSTODY PROCEEDINGS

Subpart A—Purpose

Sec. 13.1 Purpose

PART 13.1 Purpose

13.1 Contents of reassumption petitions

The regulations of this part establish procedures by which an Indian tribe or tribes that have jurisdiction over Indian child custody proceedings to state jurisdiction or otherwise to any such jurisdiction that is not a continuing or partial jurisdiction exercised by the state without the necessity of engaging in litigation. The procedure in this part will pertain only to such states that have jurisdiction over Indian child custody matters without relinquishing their claim that no federal decision or a state decision that is not a continuing or partial jurisdiction exercised by the state without the necessity of engaging in litigation. The procedure in this part will pertain only to such states that have jurisdiction over Indian child custody matters without relinquishing their claim that no federal decision or a state decision that is not a continuing or partial jurisdiction exercised by the state without the necessity of engaging in litigation.

The regulations of this part establish procedures by which an Indian tribe or tribes that have jurisdiction over Indian child custody proceedings to state jurisdiction or otherwise to any such jurisdiction that is not a continuing or partial jurisdiction exercised by the state without the necessity of engaging in litigation.

The procedure in this part will pertain only to such states that have jurisdiction over Indian child custody matters without relinquishing their claim that no federal decision or a state decision that is not a continuing or partial jurisdiction exercised by the state without the necessity of engaging in litigation.

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The Bureau of Indian Affairs has added a new set of regulations to implement the provisions of the Indian Child Welfare Act of 1978 (P.L. 95-608). The Indian Child Welfare Act is designed to protect the interest of Indian children by promoting the best interests of the child in custody proceedings involving Indian children and families and by preventing the unnecessary and inappropriate removal of Indian children from their Indian homes. The regulations provide for transferring Indian child custody proceedings from state courts to the appropriate tribal or federal agency for hearing. The regulations also establish definitions and procedures for the best interests of the child, including the definition of "Indian child," "Indian custodian," "Indian tribe," "Indian child welfare proceeding," and others. The regulations also provide for the appointment of an Indian child welfare officer to represent the child and provide an opportunity for the child to be heard in the proceeding. The regulations are intended to ensure that the best interests of the child are served in a manner consistent with the laws and customs of Indian tribes and the federal law.
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(1) "Parent" means any biological parent of an Indian child or any Indian person who has lawfully assumed the role of parent in Indian child custody proceedings, or in Indian child adoption proceedings, or in Indian child guardianship proceedings, or in any other legal proceeding involving an Indian child, and includes the following categories:

(a) Parent or legal custodian of an Indian child, including a member of any Indian tribe.

(b) Parent or legal custodian of an Indian foster child who is under the legal custody of a member of any Indian tribe, band, nation, or other organization of this or any other State.

(c) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(d) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(e) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(f) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(g) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(h) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(i) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(j) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(k) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(l) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(m) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(n) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

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(p) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

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(r) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(s) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(t) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(u) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(v) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(w) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(x) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(y) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(z) Parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(2) "Adoptive parent" means any Indian parent or legal custodian of an Indian child who is under the legal custody of an Indian tribe, band, nation, or other organization of this or any other State.

(3) "Petitioner" means any party to the proceeding or to the Indian Child Welfare Act of 1978.
The records of tribal, bureau, public and private social services agencies serving Indian children and their families.

The relitively accessible which the Indian organization has implemented a specific proposal already has to consider the necessary program emphasizing prevention of Indian family breakup. Factors to be considered in determining relative accessibility include:

1. Cultural barriers
2. Discrimination against Indians
3. inability of potential Indian clients to pay for services
4. Lack of programs which provide service to uninsured families
5. Technical barriers created by existing public or private programs
6. Availability of Transportation to service facilities
7. Distance between the Indian organization and the nearest existing program.
8. Quality of service provided to Indian clientele
9. Existence of service provided to specific needs of Indian clientele
10. The extent to which the proposed program would duplicate any existing Indian child and family service programs
11. Empowerment of Indian organizations, including Indian family service programs, in providing services to Indian children and their families.

Effective and efficient treatment of Indian family breakup. Factors include:

1. Letters of support from individuals and families to be served
2. Local Indian community representation in and control over the Indian service delivery system
3. The effectiveness of the Indian organization.
4. The adequacy of the relevant Indian organization's experience and expertise in the area of Indian family services.
5. Agency/Office. An application for a grant under this part for an on

The reservation program shall be initially submitted to the appropriate Superintendent for review and recommendation as prescribed in § 21.37.

The Bureau shall make a grant under this part for an on/off

The reservation program shall be initially submitted to the appropriate Superintendent for review and recommendation as prescribed in § 21.37.

The reservation program shall be initially submitted to the appropriate Superintendent for review and recommendation as prescribed in § 21.37.
23.20 Deadline for agency action. Within 30 days of receipt of an application for a grant under this part, the Superintendent shall take action as prescribed in § 23.29. If the applicant so requires, the Commissioneer may agree to request the action by the State Court or the Indian Tribe and their respective governing bodies in lieu of the Superintendent. The action shall be taken on the application and the Superintendent shall report the action to the agency. The Superintendent shall notify the applicant in writing to inform the applicant of the action sua sponte.

23.21 Deadline for 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 § 23.23. If the applicant so requests, the Superintendent may agree to request the action by the State Court or the Indian Tribe and their respective governing bodies in lieu of the Area Director. The action shall be taken on the application and the Superintendent shall report the action to the agency. The Area Director shall notify the applicant in writing to inform the applicant of the action sua sponte.

23.22 Final decision and action. (a) Upon receipt of an application for a grant, the appropriate Federal official shall make an initial decision. (b) The area office shall notify the applicant in writing of the action sua sponte. (c) If the area office disapproves the action, the applicant may appeal to the Superintendent or to the Area Director as provided in Part 275 of this chapter.

Subpart D—General Grant Requirements

23.241 Applicability. The general requirements for this part are applicable to all grants provided by Federal, Indian, and non-Indian organizations under this part, except to the extent inconsistent with applicable Federal statute or regulation.

23.243 Reports and availability of information. Any tribe, governing body or Indian organization receiving a grant under this part shall make information and records available to the Indian or tribal governing bodies and to Indian organizations under this part, except to the extent inconsistent with applicable Federal statute or regulation.

23.244 Fair and uniform services. Any grant provided under this chapter shall contain provisions for the fair and uniform provision of the services and benefits that the grant is intended to provide.

Subpart E—Grant Revision

23.25 Revision or amendments of grants. (a) Request for budget revisions or amendments to grants awarded under this chapter shall be made in writing. The request shall be in accordance with § 23.12 of this chapter. (b) Requests for budget revisions or amendments to grants awarded under this chapter shall be made in writing. The request shall be in accordance with § 23.12 of this chapter.

23.253 Matching share. (a) Specific Federal funds designated as non-Federal share shall be used as provided under this part for this project as non-Federal share. (b) Acceptable Federal funds for this project as non-Federal share shall be used as provided under this part for this project as non-Federal share.

23.254 Deadline for Federal Office action. Within 30 days of receipt of an application for a grant under this part, the Commissioner shall take action as prescribed in § 23.29. If the applicant so requires, the Superintendent may agree to request the action by the State Court or the Indian Tribe and their respective governing bodies in lieu of the Commissioner. The action shall be taken on the application and the Superintendent shall report the action to the agency. The Superintendent shall notify the applicant in writing to inform the applicant of the action sua sponte. 23.255 Application. (a) When the Bureau cancels a grant for cause as specified in § 23.13 of this chapter, the Bureau may assume control or recovery by any means authorized by law or by any Federal or Indian agency, or the Commissioner, without prior notice in the interest of the public. (b) When the Bureau takes control of a grant under the terms of this part, the Bureau may recover from the grantee any and all sums that have been paid out, or may otherwise take action as deemed necessary by the Commissioner or any appropriate Federal or Indian agency, or the Commissioner, without prior notice in the interest of the public.
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 welfare 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 reexamining 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 us these 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.

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.

*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 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 fund—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 organization 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 inflation 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, every 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, really a landmark piece of legislation in the field of Indian Affairs. It provides protection for Indian children and their families through the establishment and enforcement 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 proceedings, and authorizes certain Indian tribes and Indian organizations to provide Indian child and family service 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 by 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 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 provide in its regulations any 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 guidelines. 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 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 $5 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 $19,827,032 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 recipient, 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 for a single 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 consisted of 98 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 limited to the large number of applications. There were twenty 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, NAVAGO 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 McDonald and the Navajo Nation support the Navajo-Hopi bill as it is, lying on the President'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 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.

Apparent 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 related 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 assure tribal priority and authority in child welfare.

The grant formula, as developed by the central office of the Bureau of Indian Affairs to ensure 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, etc.

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 76,000, 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.

In further, many State and private agencies are still not fully aware of the role and responsibility for Navajo Tribal Bi-State Social Services 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.]
May 15, 1980

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TRIBAL COUNCIL OF ARIZONA

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 breakup 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.
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
President

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

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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 Prevention Programs
- Uintah & Ouray Ute Tribe

**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. Phoenix 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 Phoenix Area**

Phoenix Area tribes now receive $640,000 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 prevention, and court support services can no longer be encouraged. Tribes that used their "ongoing child welfare" funds as match for other social service funds will lose both resources.

**ITCA, Inc.**

14MAY80

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**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.
6. 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. 93-638 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 local 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. 93-638 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

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.
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,

[Signature]

ACTING Area Director

Attachments
July 11, 1979

Window Rock, Arizona 86515

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 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.

Claudette Bates Arthur
Field Solicitor

William D. Back
For The Field Solicitor

WDB:gt
Enclosure

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Memorandum

TO: All Area Directors
ATTN: Social Services

FROM: Chief, Division of Social Services

DATE: 19 DEC 1977

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

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

Attachments

RECEIVED

DEC 29, 1977

Received for filing

[Handwritten note]
Regional Program Directors for Public Services

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 agree to provide copies of the memorandum to our regional staff for use in notifying States that have Federal Indian constituencies. 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.

Attachment

Michio Suzuki

Acting Commissioner

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 Indians. 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 Indian tribes recognized by the State. 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 mean State and local public agencies other than the State agency, and Indian tribes."
The title XX regulations (including their own 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 (66 Stat. 685) 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 may 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. 94-601 ("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. 94-601, 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 expenditures. Title XX regulations specify that Federal legislation must authorize the use of other Federal funds for matching expenditures under title XX.

Under Section 104 (c) 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. Title XX regulations specify that Federal legislation must authorize the use of other Federal funds for matching expenditures under title XX.

Under Section 104 (c) 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. Title XX regulations specify that Federal legislation must authorize the use of other Federal funds for matching expenditures under title XX.

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 - 228.82). Indian community colleges and post-secondary schools may wish to look into this program.

Raymond V. Butler
Acting Deputy Commissioner
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.

Sincerely,

[Signature]

Attaeements
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, 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.

(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.
3. The Economic Opportunity Act of 1964, P.L. 89-452, as amended by Sec. 222 of P.L. 90-222, and Sec. 222 as amended by Sec. 105 of P.L. 91-177 and Sec. 2(a)(9) of P.L. 94-341, 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 foods, 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 . . . ."

4. 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 (i) 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 (ii) coordinating public and private employment programs; . . . ."

5. The Indian Self-Determination and Education Assistance Act, P.L. 93-388, Sec. 104(c) provides: "(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 (i) 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 (ii) coordinating public and private employment programs; 

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
INFORMATION MEMORANDUM
185-B4-77-21 (AS)  
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 amends 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 Controller 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. HEP'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 20 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 ensure 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 IV 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
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.
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 required. 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 reappear, 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 have a 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 85-280. We sought 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 assure that 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 reassertion 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 reassertion) or disapproved. The following table is a compilation of these notices that have been published in the Federal Register as of:

<table>
<thead>
<tr>
<th>Tribe petitioning for reassertion of jurisdiction</th>
<th>Petition published</th>
<th>Petition approved</th>
<th>Petition effective</th>
<th>Petition disapproved</th>
</tr>
</thead>
<tbody>
<tr>
<td>La Conner Tribal Council of the Lake Superior Chipewa Indians</td>
<td>Jan. 21, 1980</td>
<td>Apr. 24, 1979</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spokane Tribe of the Spokane Reservation</td>
<td>Mar. 15, 1980</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>White Earth Reservation</td>
<td>Mar. 25, 1980</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nokomish Tribe</td>
<td>Mar. 27, 1980</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Confederated Tribes of the Colville Indian Reservation</td>
<td>May 1, 1980</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

This table clearly shows the Yakima Tribe as the first Indian tribe to petition for reassertion 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 children’s 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 funds under Title II. The problems and difficulties with receiving grant funds and the cost of the reassertion 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 1978. 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 3 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 reassertion 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 thereof should be evidence sufficient to show the existence or nonexistence of these factors.

II. COST OF THE REASSERTION OF JURISDICTION

A. Yakima Indian Nation Children’s Court budget for fiscal year 1979: $65,309.

<table>
<thead>
<tr>
<th>As of June 15</th>
<th>April</th>
<th>May</th>
<th>June</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependency hearing</td>
<td>20</td>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>Cases diverted</td>
<td>14</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Adult summons issued</td>
<td>0</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>40</td>
<td>31</td>
<td>32</td>
</tr>
</tbody>
</table>

The following statistics also relate to court activities (they do not reflect cases transferred from State court):

1. Open dependency files
2. Open adoption files
3. Open diversion files

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 transferring 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, D.C.: 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 Yakima Nation began a year ago and a half ago. The Portland Area Office arranged for a tribal briefing on the proposed Public Law 93-608 regulations and solicitation of comments and failed to notify the Yakima Nation of a meeting. Yakima was later to learn that a number of other tribes was notified in a timely manner. 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 began a year ago and a half ago. The Portland Area Office arranged for a tribal briefing on the proposed Public Law 93-608 regulations and solicitation of comments and failed to notify the Yakima Nation of a meeting. Yakima was later to learn that a number of other tribes was notified in a timely manner. The Yakima Nation was the first Public Law 83-250 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 foster care and adoption program. The Tribe indicated within its petition that it would be making a request for the funding of training. The BIA Division of Law and Order viewed the proposal and approved its initial review of the proposal. The BIA's review of this grant application was conducted in the same manner used to review the Public Law 93-608 grant application. No application will be accepted from the Agency if this format is not used. (Appendix II)

On December 28th, the Tribe 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 Memnick 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 been more specific in requesting that material rather than to have waited for 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 which 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 Memnick's 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, 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 been previously informed that the grant application format was to be used, 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 Area and Central Office and insisted that the application as prepared was processed at the Area and/or Central Office level, 3. The Agency's recommendations were disregarded by Tribal employees because the central office staff assured them that the application as written would be processed even though, in the opinion of the 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 Office. The Agency, Area and 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 uncertain as to whether 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. 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. I questioned Mr. John Saxon, the Solicitor, about the status of the Tribe's application. Mr. Saxon informed me that the Solicitor's Office had not yet made a determination as to whether the Tribe's application had been accepted. The Solicitor's Office had recently received a telegram from the Tribe giving notice of a conference to be held between the Tribe and the Solicitor's Office to discuss the problems which had caused the denial of the Tribe's grant application.

On April 22, 1980 the Tribe forwarded a telegram to BIA Commissioner William Hallet, informing him of the denial of the Tribe's application and asking for an official clarification of the situation. The Telegram further stated that if the application was in fact denied the telegram was to serve as an official notice of the appeal, based upon the fact that the Tribe had not received a written notification of this decision from the Agency, Area or Central Office of the BIA.

On May 7, 1980 the Tribe forwarded a second appeal of the Tribe's grant application to the Solicitor's Office. The Tribe argued that they had been denied a grant because the Solicitor's Office had not given them enough time to attempt to re-write sections of the proposal in a form that was acceptable to the Solicitor's Office. The Tribe further stated that they had not been given any written notification of this decision from the Solicitor's Office. The Tribe further stated that they had not been given any written notification of the decision from the Solicitor's Office. The Tribe further stated that they had not been given any written notification of the decision from the Solicitor's Office.

On May 22, 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) 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.

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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 cannot approve the application for construction moneys until operations money is available and the BIA is saying that it cannot guarantee operations money 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.

1. 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 the BIA 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.

2. 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. 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 adequate for the Tribes and the BIA staff are receiving only one 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.

   3. 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.

4. We stress that the BIA must provide Tribes and Organizations with all current personnel capabilities of the Tribes and the impact of the BIA on these capabilities. 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.

   4. Encourage the BIA to become actively involved in joint agency funding 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.
Memorandum


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 applications 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.
Memorandum

To: All Superintendents, School Superintendents, Project
    Engineer, Assistant Area Directors' 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.

* 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
address them to the Area Branch of Social Services.

[Signature]
Area Director
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 18, 1979 rather than December 28, 1979, as indicated by your staff.

cc: Branch/Chrono
Reading File
JF:SLW:12-26-79

cc: George W. Colby, Prosecutor
John Mesple, L & J Division
Phil LaCourse, Admin. Asst.
Delano Saluskin, Admin. Dir.
kmb/1-24-80
Mr. Hiram Olney
December 28, 1979

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 428 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. Furthermore, 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. Heninick, Chair
Yakima Tribal Council

cc: Vincent Little, Area Director
Congressman Mike McCormack
John Nesis, Division Administrator, Law and Justice
Dwight Ambrose, Div. Administrator, Grants & Contracts
Tribal Administration

PAL:G1

cc: George W. Colby, Prosecutor
John Nesis, LLB, Division Director
Phil LaCourse, Admin. Assit., Delano Salishkin, Admin. Dir.
MHU-24-B9

Mr. Johnson Heninick
Chairman, Yakima Tribal Council
Yakima Agency
Toppenish, WA 98948

January 3, 1980

Mr. Johnson Heninick:

There is apparently a misunderstanding concerning my letter of December 26, 1979 about the grant application we received December 28th 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 over-all concept but with the fact that the scope and proposed cost is in excess of the specified formula. Writing 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 $4,000,000. The formula more specifically specifies $5,000,000, whichever is greater. In computing these factors $15,000 is the maximum for the initial application. Further distribution of any remaining balance of the $4.3 million follows the percentile distribution described on page 5739 of Federal Register Vol. 44 No. 236 dated December 4, 1979.

This application was discussed in a meeting between Jessie Saldan, Social Worker, whom I agreed to advise you on this matter, and representatives of the Tribe. Mr. Saldan did explain and provide 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 Title I and Title II.
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.

Enclosures

cc: George W. Colby, Prosecutor
John Mephan, L & J Division
Phil LaCourse, Admin. Asst.
Delano Saluskin, Admin. Director
Lab/1-24-80
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 the 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.

\[\text{Signed} \text{ Vincent L\'H\'ile, Area Director}\]

cc: Superintendent, Yakima Agency

MGMT/1F 2/23/80

Bcc: Sum me
chrony
Mailroom

Memo from Yakima 2/23/80 10:00 AM
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 foster care licensing, and it is also training Indian foster parents in foster care.

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. $40,630.
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 $16,000 through the grant—
Mr. BUCKMAN. We have only $16,000 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 separation, and the implemention 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 has been provided in 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 proportioned 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 $16,000 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 has recognized the importance and significance of the act and has taken appropriate steps such as drafting 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 meetings with the Socia 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 one-third 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 submission 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 reaffirming tribal sovereignty and self-determination of Indian Tribes. We are attaching some documents and correspondence which pertain to the Act and our concerns with funding allocations. Thank you.
John Melcher, Senator
United States Senate
631 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 other words 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
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 $16,000.00 - $17,000.00. As indicated in Attachment II Fort Belknap requested $55,740.00 and received $16,903.00 or just under one-third (1/3) of our request. At the same time the Shoshone Tribe and Arapahoe Tribe were occupying one reservation but have two councils each received $16,384.00 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 these inadequate funds were poorly distributed by the Bureau of Indian Affairs.

Sincerely,

Charles "Jack" Plumage
President
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 proportioned out to the Tribes. The proposal submitted to the Bureau by the Fort Belknap Indian Community received the highest grading in the Billings Area but yet will get less than 1/3 of their request 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.
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 CFR 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 $11,631,221. Attached you will also find a brief summary sheet concerning 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 = 260
   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 = $8,549,382

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.
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

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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 $16,963 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 requests, but have not received, written verification of the above mentioned telephonic request. Therefore, these amounts are definitely tentative and will not be final until we receive 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  
Area Social Worker

Enclosure

cc: Chief, Indian Services
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.]
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 enactment 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 create the conditions where large numbers of people feel hopeless, powerless, and unwanted. 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 unpromising state and federal attitude in the area of epistemic effecting 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 fare 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 most important, comprehensive social service delivery systems for Indian children have been adopted in several states, and this has now become a criterion for the Act.

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. Reg., 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 Oregon Court case, In the Matter of Melinda Tweabays 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 Indian Native Claims Settlement Act in 1971 are not covered by the Indian Child Welfare Act.

The State of Alaska, in particular, has since taken noteworthy steps to assure the effective implementation of the Child Welfare Act. In a resolution adopted on April 23, 1980 the Alaska State Legislature proclaimed that:

(1) the governor is urgently requested to direct the Department of Health and Social Services to promptly take steps necessary to implement the Act in Alaska and to provide the financing necessary for implementation;

(2) the governor is urgently requested to direct the Secretary of Health and Social Services to promptly take 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 directed 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 assure 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 to $30,000. After each grantee indicated their need, remaining funds were to be allocated equal to the percentage of the total number of Indian children 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 amount for that tribe. As a result applied only for that amount, with the 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 Congress has a specific awareness of the needs of 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.

Finally, we would 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. Implementing such agreements could provide additional funding for tribal 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 dormitories
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:

The committee was informed of the devastating impact of the Federal boarding school system on Indian family life and on Indian children, particularly the children in the elementary grades and in elementary teachers 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 recognition made by Congress "to promote the stability and security of Indian tribes and families" will not be fulfilled. The committee will 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 locally convenient day schools, but who are placed in boarding schools for 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 board 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.
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 of 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?
MEMORANDUM
June 19, 1980
OFFICE OF THE SECRETARY
CROW AGENCY, MONTANA
59022

CROW TRIBAL COUNCIL

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 grant 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 same, 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 intéressant 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.


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 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)(8).

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 was reviewed. It should 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 have 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 agency "watch dog," has had to spend innumerable hours preparing comments regarding to the regulations. He has had to point out on three occasions where off-reservation Native American organizations were not actually being cut out of access to those funds as authorized under Title II, Sec. 202 of the Act. We are deploring 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 equalization 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 involved 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, 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 and I hand 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 consideration. All three 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 reception was "Fie What?!" This constitutes another violation of their own regulations—23.29(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 officers 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. That review was promptly done, but!! The reviewer’s comments indicated:

Our program needed to be "re-cast to reflect current goals and objectives" under Title II for a "strong concentration on prevention and outreach." 65 percent of our activities planned pertained therein, 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 commentator 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 under Title II for a ‘strong concentration on prevention and outreach.’”

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 put their three quarters (23.29, 23.35). 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 deficiencies mentioned, pared down the budget request, etc. In other words, we 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.
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,

[Signature]

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 relevance 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.
March 5, 1980

Louise Zokan, Director
Indian Child Welfare Act Program
Division of Social Services
1951 Constitution Avenue, N.W.
Washington, DC 20242

Dear Louise:

According to our right to appeal the decision of the Bureau to not fund our application, 25 CFR 23, Support 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 $90,000.

- Again a prejudiced, or at best poor, reading.

- 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 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.

- The first place. The funding formula was variously interpreted by Bureau personnel. 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.

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 weigh 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 announcement.

- 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 announcement did not specify a program priority. (See attached).

- program methods 2, 3, 4, 6 & 7 (leaving only 1 & 5) 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, 4.3.2) indicates every attempt is to be made to utilize existing services. (See also Point 4 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 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-Indian; we have chosen to hire and train our own paraprofessional 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 are 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 cases. (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. Costs 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., travel 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 knew 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/mess 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 prejudicial 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 deficiencies 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
Administrative Assistant

Enclosures
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.

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**CENTRAL MAINE INDIAN ASSOCIATION**

95 Main Street
Orono, Maine 04473

**MAINE INDIAN FAMILY SUPPORT SYSTEM**

**FY '80 BUDGET**

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5 March 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 ensure 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 understanding 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, $6,125 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,

[Signature]

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 conversation 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.T.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 because 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

INTERNATIONAL CHILDREN'S PROGRAM,  

Senator 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 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 actively 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 facilities, 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 tribes.

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.
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:

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 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 (on 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 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 available 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.