

Mediating in Indian Child Welfare Act (ICWA) Child Protection Cases: Alaska's Experience

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The Child Welfare Collaborative Decision Making Network

Mission:

Promote safety, permanency and the well-being of children through the development of decision-making and conflict resolution processes that engage and empower families and youth; that are culturally appropriate; and that enable families to fully participate in decisions that impact their future.

Purpose:

- **Convenes interdisciplinary professionals to advance and refine practices related to decision-making and conflict resolution in child welfare cases;**
- **Encourages a collaborative approach to problem solving among professionals;**
- **Identifies best practices and innovative approaches;**
- **Promotes professional education and networking.**

Webinar Overview

- Alaska's Program Perspective
- Indian Child Welfare Act (ICWA) Overview
- Assets Tribes Bring to Mediation
- What is Mediated
- Challenges in Mediation
- Mediation Case Examples
- Discussion/Questions
(Please hold to end!)

Alaska's Child Protection Mediation Program

- Statewide, state court-connected
- Over 50% mediations in ICWA cases
- 229 federally recognized tribes in Alaska
- Essentially no reservations
- Few tribal courts
- Disproportionality: 17% in general population vs. 62% Child Protection System

PURPOSE OF THE INDIAN CHILD WELFARE ACT

To set minimum standards for States when child abuse, neglect and adoption cases involve Native children – State courts, State child protection agency and adoption agencies are required to follow ICWA;

To authorize Tribal courts to handle child abuse, neglect and adoptions involving Tribal members



KEY PROVISIONS: CUSTOM LAW and/or TRIBAL LAW DEFINITIONS

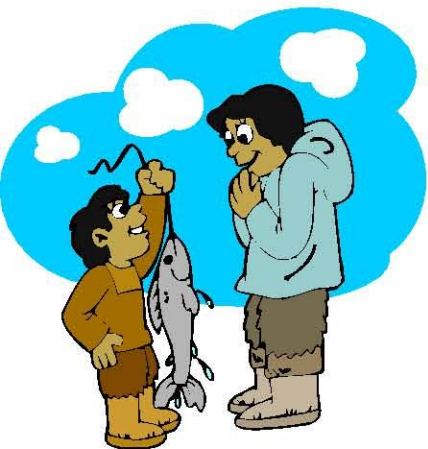
25 U.S.C. § 1901 et. seq. §1903

Extended Family Member (2)

Indian Custodian (6)

Parent (9)

Tribal Court (12)



RIGHTS OF A NATIVE CHILD

- ❑ TO Tribal identity and entitlements
- ❑ NOT to have family broken up
- ❑ TO be placed with a Native family
- ❑ TO have information regarding the child's Tribal identity protected and preserved



RIGHTS OF THE TRIBE



- ❑ To receive notice of “child custody proceeding” involving Tribal member
- ❑ To intervene at any time until case dismissed
- ❑ To request transfer of jurisdiction to Tribal court
- ❑ To receive records
- ❑ To establish child welfare programs
- ❑ To full faith and credit for Tribal court child protection orders

RIGHTS OF PARENT

(OR INDIAN CUSTODIAN)



- ❑ To designate an Indian custodian
- ❑ To a court appointed attorney in any removal, placement or termination of parental rights proceeding
- ❑ To notice of proceedings
- ❑ To have State make **ACTIVE EFFORTS** (to provide remedial services to prevent removal and to reunify the family)
- ❑ To a interpreters

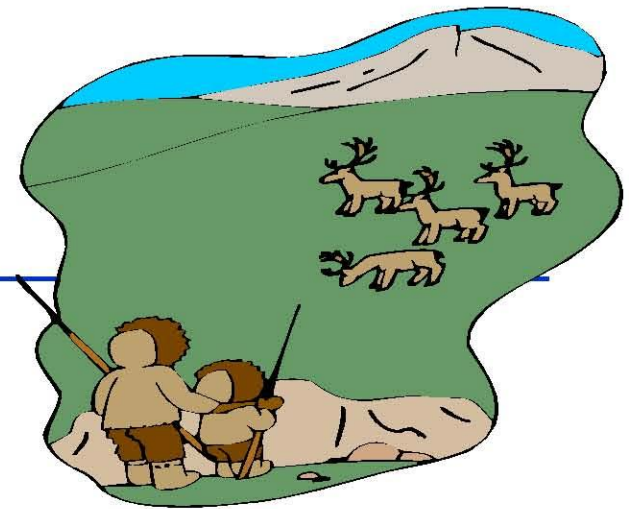
SOME *(but not all)* KEY POINTS FOR TRIBAL INVOLVEMENT

- ❑ Confirming Tribal member child status when first contacted
- ❑ Advising OCS of “extended family” placements available when concerns about family are noted
- ❑ Providing support & services to family to encourage reunification and/or prevent child’s removal



MORE KEY POINTS FOR TRIBAL INPUT

- ❑ Intervening as a legal party
- ❑ Developing & having input to assure the case plan is culturally specific to the family
- ❑ Identifying long term placement if reunification fails
- ❑ Identifying and supporting family contact – including extended family & others in contact with child during out of home placement



Some Variables in Tribal Response to ICWA Cases

Tribal Government action is often required before the Tribe can respond to an ICWA notice:

- When a Tribe Intervenes, it is taking official government action
- Tribe must verify membership & may need to do research

Skills & knowledge of ICWA worker:

- ICWA workers may not be full-time positions in small tribes
- Some ICWA workers are not trained social workers

Case-specific issues:

- Type & severity of abuse and ability to provide services
- Age of child & severity of parental problems/issues
- Parent connection to Tribe via relatives or residency

Where the case is taking place

- Some Tribes only intervene if the child/family is living in or near the Tribal community due to resource limitations



OTHER IMPORTANT FACTORS in DECISION TO INTERVENE as a Legal Party

- 1. Skills & knowledge of ICWA worker**
- 2. Type & severity of abuse and ability to provide services**
- 3. Age of child & severity of parental problems/issues**
- 4. Parent connection to Tribe via relatives or residency**

ASSETS TRIBES BRING TO MEDIATION

- Lifetime commitment to tribal-member child and interest in long-term well-being
- Traditional concept of cooperation and sharing of resources – doing things for the good of the community
- Willingness to learn and understand
- Traditional knowledge of group decision-making
- Ability to be creative and flexible

ASSETS TRIBES BRING TO MEDIATION

Cultural Navigator

- Help interpret a system that may be foreign to its members; be a buffer
- Help “the system” understand tribal culture
- Identify and correct cultural misunderstandings

Cultural Resources and Knowledge

- Assets, strengths, and resources of family system
- Tribal programs and services available in the village
- Traditional cultural resources

What's Mediated?

- Active efforts
- Placement - ICWA preferences
- Preservation of child's connection to extended family, tribe, cultural identity
- Which tribe intervenes
- Transfer of jurisdiction to tribal court
- Who is an Indian Custodian

Challenges in Mediation

Designing the process

- Must resonate across cultures
- Cultural assumptions of a facilitative mediation model

Communication styles....Language

Interpreters.....Seating.....Speaking order

Challenges in Mediation

Designing the process

- Who participates?
 - Defining family
 - Tribe hasn't intervened
 - More than one tribe involved
 - Roles of others
- Authority to agree
- Deciding where mediation takes place
- Telephonic participation

Challenges in Mediation

During the process

- Cultural values conflicts
 - Safe caregivers
 - Safe parenting
 - Permanency
- Cultural misunderstandings
- Conflict between tribes

Challenges in Mediation

Contemporary tensions seated in racism, colonization, historical trauma, unresolved grief....

- Lack of trust
- Disempowerment
- Fear
- Tribal-State hostility
- De-humanization of parties
- Social ills that are the subject of the child protection case

Defining Historical Trauma

Historical trauma is the cumulative emotional and psychological wounding over the life span and across generations that comes from massive group trauma such as GENOCIDE, which has been cited by Maria Yellow Horse Brave Heart.

www.speroforum.com/site/article: August, 2005.



The impact of history on Alaska Native people has been passed down from generation to generation.

Pre – Colonial Contact

- Emphasis on family, group, village – tribal cultural identity
- Emphasis on spirituality
- Learning through stories of the past
- Emphasis on sharing rather than acquiring possessions

Colonization of Indigenous People

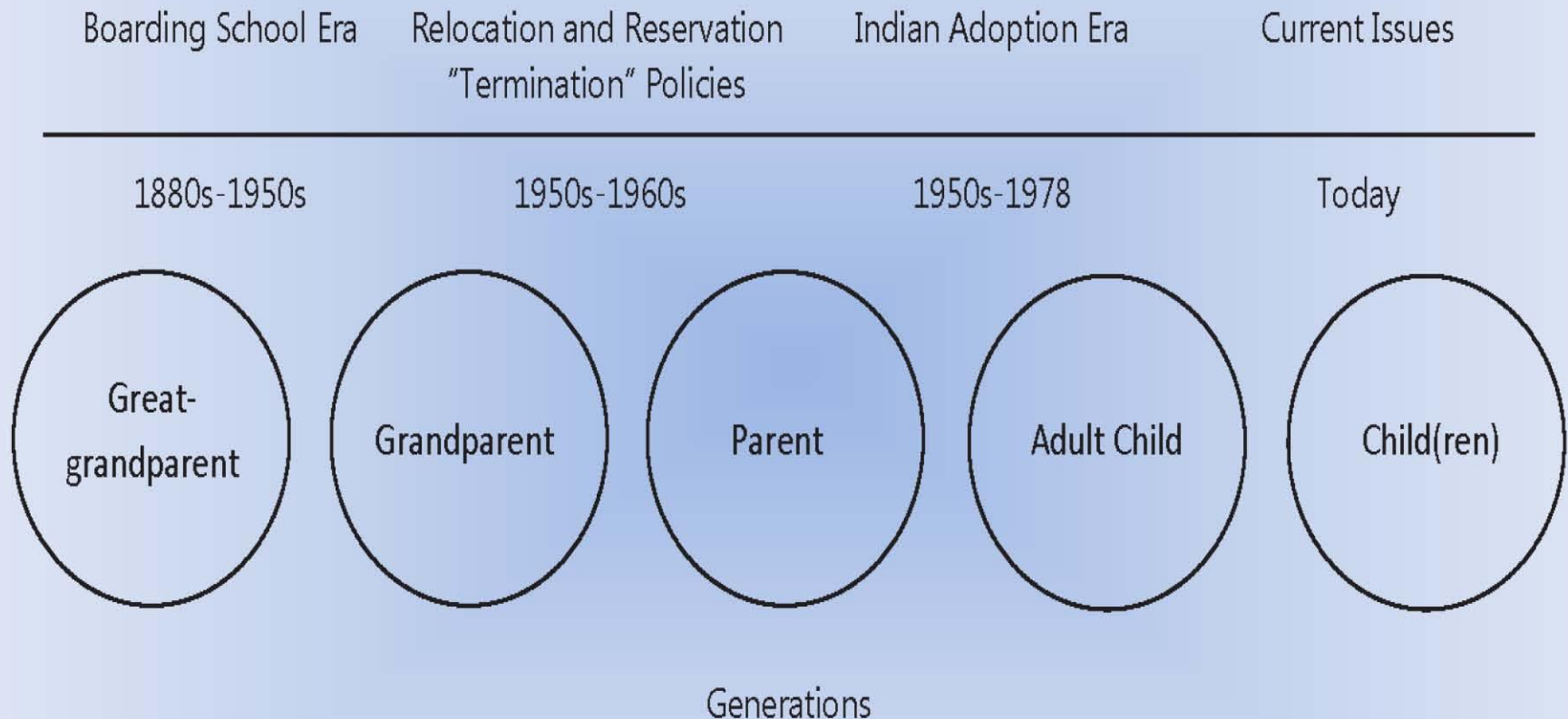
Through government actions & policies:

- Removal from land; land taken from the People
- Denied Access to/ use of Energy/Food
- Attack sovereignty - Disrupt Leadership and Governance
- Taking Away Thoughts & Practices – Worldview, Language, Spirituality, Healing
- Taking the Children

Symptoms of Colonialism

- Intergenerational Trauma
- Lateral Oppression and Violence
- Internalized Racism—Self-Blame
- Identity Politics
- Dismembered Social Norms
- Adverse Childhood Experiences
- Blaming the Victim

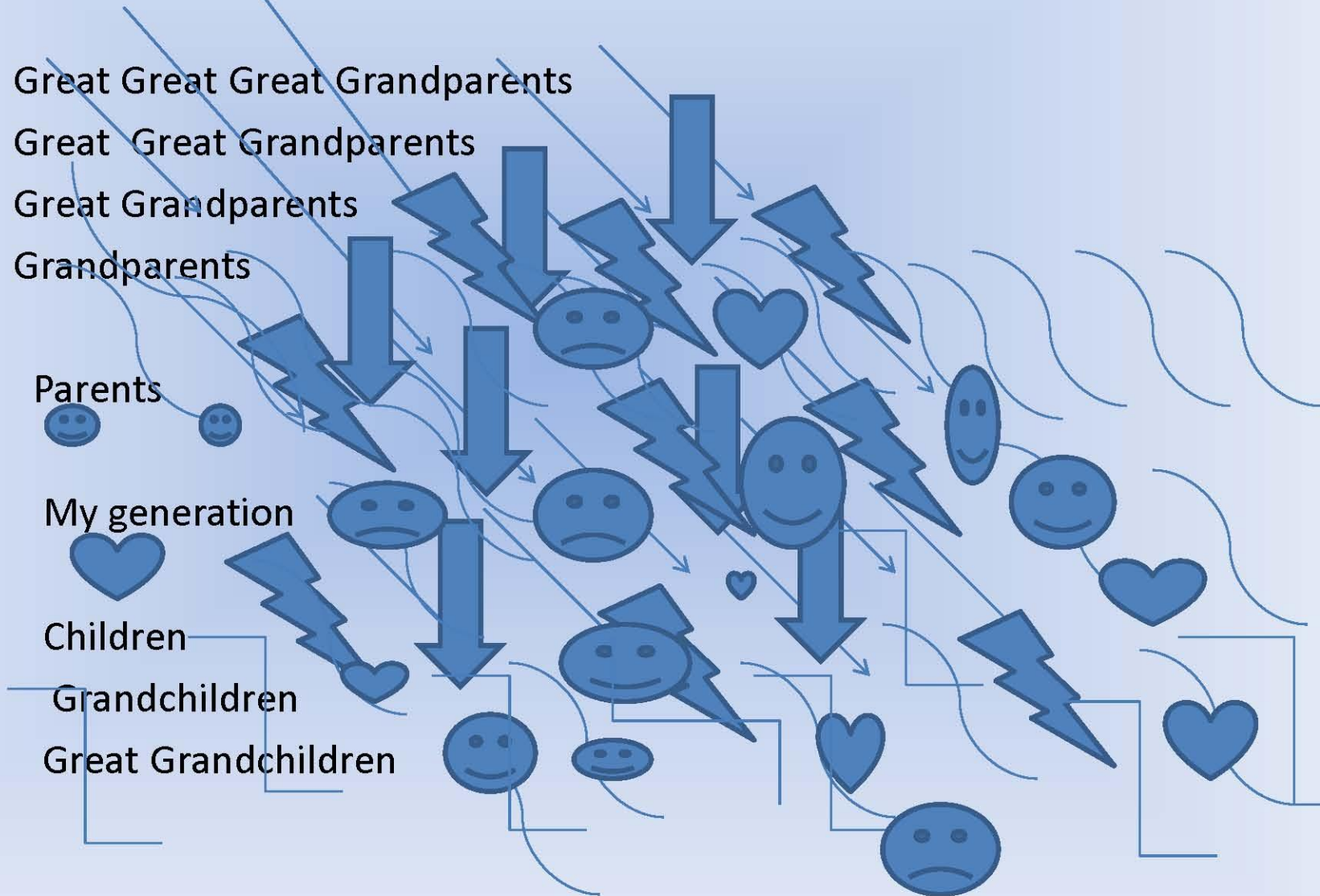
Intergenerational Transmission of Historical Trauma and Loss Map



"It Runs in the Family": Intergenerational Transmission of Historical Trauma" - Myhra, L., MS, LMFT in American Indian and Alaska Native Mental Health Research, Volume 18, Number 2, 2011

Disenfranchised Grief and Loss becomes chaos - D. Rose, 2007

- 1820 Great Great Great Grandparents
- 1850 Great Great Grandparents
- 1870 Great Grandparents
- 1900 Grandparents
- 1934 Parents
- 1950 My generation
- 1980 Children
- 2000 Grandchildren
- 2030 Great Grandchildren



How this plays out in mediation....

Scenarios from Mediation