

Welcome to video five of this series, the final video. During this video, we will be discussing permanency and when the Indian Child Welfare Act, or ICWA applies.

Permanency.

Permanency in child welfare means a legally permanent, nurturing family for every child. Permanency planning is time-sensitive, goal-oriented activities to either maintain children within their families of origin and placing them with other permanent families. Courts play a key role within the child welfare system in achieving permanency for children, judges, attorneys, child welfare professionals, and others must understand and implement the laws and work together to ensure timely, safe and stable permanent families for children.

Concurrent Planning.

Concurrent planning is a process of working towards reunification, while at the same time establishing an alternative or contingency backup plan. Concurrent, rather than sequential, planning efforts move children more quickly from the uncertainty of foster care to the security of a safe and stable permanent family. Children need permanent families as quickly as possible for their emotional well-being. Thus, concurrent planning is largely based on child-focused, family-centered, and culturally competent practice philosophies, as well as theories about a child's sense of time, attachment and bonding, and the impact that separation and loss have on children.

Everyone who works with children and families in abuse or neglect cases needs to understand and accept that the concepts of concurrent planning are a creative and responsible way to achieve permanency for the child. The support of the courts, attorneys and advocates is absolutely necessary to the success of concurrent planning. Concurrent planning encourages the adults who care about the child to become collaborators.

Guidance for achieving permanency for children served by the child welfare agencies is provided in federal and state law and policy. Permanency goals must be approved by the courts. And periodic court hearings review permanency plans for children in out-of-home care to ensure adequate progress is being made towards these goals. In 1997, when the Adoption and Safe Families Act, or ASFA, was signed into law, it radically changed the child welfare environment, requiring states to act within tighter timeframes to establish and achieve permanent placements for children in care.

Successful permanency outcomes within ASFA could include children remaining safely with their parents or extended families, children being reunified safely with their parents or extended families, or children placed safely with legal guardians, relatives or other families, children adopted by relatives or other community families, or children over the age of 16 being placed in another planned permanent living arrangement or APPLA.

A permanency hearing must be held within 12 months of the entry of a child into foster care, and every 12 months thereafter until a permanency goal is achieved.

The purpose of the permanency hearing is to decide whether the child will return home, and, if not, what the permanent placement will be for the child. Decisions at the permanency hearing must be binding upon the Department of Social Services. During the permanency hearing, the court must decide whether or not the child is to return home, and if so, set a specific timetable and plan for the return.

If the child cannot be returned, another permanent goal for the child should be identified, and a specific timetable should be set for achieving the alternate goal. The court must also decide whether the department has made reasonable efforts to finalize the permanency plan currently in place.

Permanency Planning Hearing.

This hearing must be held within 12 months from the initial out-of-home placement according to South Dakota Codified Law 26-88-22. You can learn more about this important codified law on the resource page of this series. It is your responsibility to assess the environment in which the child has been living in. The child should live in a stable relationship with his or her guardian.

There are factors to consider in permanency issues, such as the family dynamics at home, whether or not there are addictions or substance abuse in the home, whether there is a history of domestic violence or violence against the child in the home, and most importantly, whether the safety of the child can be managed in the home.

These are just a few historical family factors to keep in mind. Establishing trends of household issues is something to consider when dealing with permanency placement. A major consideration is the physical and mental well-being of the child. The planning process should begin when the child is brought into the system, and you should conduct timely assessments and consult relevant services throughout the entire process.

To take permanency planning a step further, the following is a list of steps you should take to ensure permanency planning is effective and maximized: Consult with the child and conduct an independent investigation. As a child's attorney, you should always assess, along with DSS, whether the child can be safely placed or maintained in their home. You should consult with DSS and be a member of the child's team.

Make sure there is a concurrent plan developed. Ensure reasonable and active efforts are being made. Ensure relative searches are going on and followed up on for some conclusion. To expedite permanency, ensure timely notices of hearings are done. Ensure the court has made a determination of the proper tribe for notice when ICWA applies. Ensure court orders are completed, timely and accurate. Ensure court delays are avoided. Ensure the A & N case is not

delayed by concurrent court actions, such as a corresponding criminal case. These cases have priority in scheduling hearings and trials. See South Dakota codified law 26-7A-33. Seek out expertise of professionals involved with the case, such as DSS and the child's therapist, when exploring permanency options for the child. As the child's attorney, reach out to the tribe for their opinion on placement and any other efforts that DSS could be making.

When representing adolescence and permanency planning, there are different circumstances that you should consider. Ensure independent living skills are being addressed. Ensure appropriate plans for transitioning to adulthood are in place. Consider the adolescents' wishes for their placement and the existing bonds they have with their parents and extended family that will not be forgotten or replaced by adoption.

Termination of parental rights, or TPR, can be found in South Dakota Codified Law 26-8A-26, 26.1 and 27.

Child Representative Role: Post TPR.

If the child is older, they may have a more established opinion about what they desire for permanency planning. Even though this is the case, keep in mind that the best interest of the child may not always be what they desire.

Your discretion in this situation is more important than ever. When dealing with children of other cultures, there are two important acts to keep in mind. The first one is the Multiethnic Placement Act, or MEPA, and the second is the Indian Child Welfare Act, or ICWA. Although we will not be reviewing MEPA in detail, you can refer to the resource page of this training series to learn more.

Determine if ICWA applies.

When beginning an abuse and neglect case, you need to establish if ICWA applies. In addition, it should be noted that ICWA overrules the Adoption and Safe Families Act or ASFA unless the federal and or state statutes have a higher standard than ICWA. The purpose of this act is to prevent the unwarranted removal of Indian children from their families and tribes because of cultural bias or ignorance.

Also, ICWA is in place to ensure that children who are removed from their families maintain affiliation with their culture and tribe. Finally, this act is meant to maximize tribal decision making regarding Indian children and ensure that the best interest of the child is carried out if there are any cultural differences that need to be taken into account.

When determining the application of ICWA, consider if the following applies. Who is an Indian child? According to ICWA, they are defined as an unmarried child under 18 who is a member of an Indian tribe, or is eligible for membership in an Indian tribe, and is the biological child of a

member of an Indian tribe. Canadian tribes are not tribes under ICWA.

Types of proceedings ICWA applies to: Abuse and neglect child proceedings. Status offenses, which includes being truant, unruly, incorrigible, and also alcohol offenses and being a child in need of supervision.

Where ICWA does not apply.

ICWA does not apply to custody disputes between parents, delinquency proceedings, paternity and child support proceedings, voluntary placement where the child can be regained upon demand, and protection orders. It is important for you to understand the Indian Child Welfare Act. Visit the resources page on the UJS website for a full definition of ICWA and when it applies.