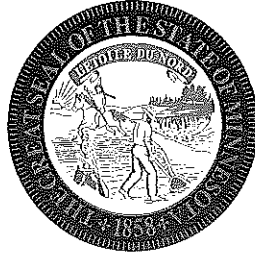


State of Minnesota  
Office of Ombudsperson  
For Families



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December 12, 2014

Dear Governor Dayton and Child Protection Task Force Members:

This report is being submitted by the Ombudsperson for American Indian Families with specific data for the American Indian community.

Office of Ombudsperson for Families

By way of background, the Office of Ombudsperson for Families (OBFF) was created in 1991 by the state legislature to provide a fair, neutral and transparent environment between state and county agencies and families of color and American Indians in Minnesota. The OBFF strengthens family connections through child welfare redesign that creates racial equity in services, and improves outcomes for American Indian children and children of color. The OBFF works with state and local courts, policy makers, and service providers to promote integrated systems to ensure family reunification, stability, security, and permanency. In addition, the OBFF develops policy to support and create culturally competent and bilingual social workers and guardians ad litem in communities of color throughout Minnesota.

The mission of the OBFF is to ensure that children and families are protected by law in all child placement proceedings conducted by public and private agencies and organizations. Four full time Ombudspersons operate independently, but in collaboration with the Indian Affairs Council, the Chicano Latino Affairs Council, the Council on Black Minnesotans, and the Council on Asian-Pacific Minnesotans. There are four community-specific boards that comprise the full board that advises the Office. The Ombudsperson for American Indian Families works with the American Indian Community and monitors and ensures that the child protection laws and policies, including laws protecting American Indian children are followed.

Indian Child Welfare Act and Minnesota Indian Family Preservation Act

On October 27, 1978, Congress passed the Indian Child Welfare Act (ICWA). This law mandates that the tribes be notified if an Indian child is in out-of-home placement and that the tribes are involved in decision-making for their children. Under ICWA, tribal courts must be given the option to take jurisdiction and the state must engage in "active efforts" to preserve Indian families, including the provision of culturally appropriate services for struggling families, and to actively reunify the child with his or her birth family and/or to place the child with extended family, another family within the same tribe, or with a Native family from another tribe.

In 1985, Minnesota's State Legislature enacted the Minnesota Indian Family Preservation Act (MIFPA). MIFPA and its amendments strengthen and expand ICWA, while emphasizing the importance of maintaining tribal involvement and communication, requiring tribal notification for voluntary proceedings, and appropriating funding for provision of services to Indian children and families.

### Alarming Statistics

Based on the 2013 Minnesota Child Welfare Report, American Indian children living in Minnesota have one of the highest rates of contact with the child protection system in the nation. In the report, American Indian children were six times more likely to be reported as abused or neglected than were White children. This report further stated that American Indian children were 15.5 times more likely than a White child to be placed out-of-home. This number has increased since the February 2010 Minnesota Child Welfare Disparities Report where American Indian children in Minnesota were 12 times more likely to spend time in out-of-home placement than White children.

### Bias Against American Indians and ICWA Being Applied Differently

Given the alarming statistics for American Indian children, there are questions whether institutional, structural, racial and/or unconscious bias is a factor in the decisions to remove American Indian children from their families and the length of time the children remain out-of-home. The Minnesota child protection system is county-run with state oversight. Every county interprets the law differently and there is a wide variation in how Minnesota's 87 counties apply the ICWA law. For example, a common disagreement between the counties and the tribes is regarding where the children should live while they are in out-of-home placement. In addition, even when the law is clear, the counties vary on how they apply it. Under ICWA, it is clear on how notice should be provided. The law states: "*In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention.*" [Emphasis added.] However despite this very clear language, more than 90% of the counties send the notice by certified mail instead of registered mail.

There have been attempts to reduce bias in deciding which cases to investigate, however the disparities continue. While there has been some ICWA training to help non-Indians understand the traditional role extended families play in raising Indian children, more is needed to eliminate and/or recognize the bias which could then lead to reducing the number of children removed from their families.

Transparency is needed so that we know who the reporters are. According to the most recent 2013 report, of the 19,602 maltreatment reports made, school personnel and law enforcement made up 50% of all maltreatment reports to local child protection agencies. It is recommended that when the reports are taken, that the screener inquires on the race and occupation of the mandated reporter/reporter so that data can be gathered for further analysis to determine if there could be racial or unconscious bias on the part of the reporter.


### Training and Education

School nurses seem to be given more credibility than other school personnel and other reporters. Questions arise as to what type of culturally appropriate training is available to nurses and school personnel and what do they know about the American Indian family dynamics, its history and ICWA. Education is also needed for county attorneys, guardians ad litem, social workers, child protection workers, judges, public defenders, court-appointed attorneys and court administrators -- especially for those county staff in greater Minnesota and in counties that have reservations.

Conclusion

While there will always be children who need to be removed from unsafe situations, adequate funding and family services for prevention, increased tribal involvement, culturally appropriate services for the American Indian families and adequate and continuing ICWA education throughout the State of Minnesota can help to reduce the disparate treatment of American Indian children and their families. As the Ombudsperson for American Indian Families, I will continue to ensure that all laws governing the protection of Indian children and their families are implemented in a culturally competent manner and that decision-making processes are in compliance with the laws that protect them. However, if each county were required to apply the laws consistently, I could spend more time assisting the families and less time educating and working with the counties to ensure compliance with ICWA.

Sincerely,



Jill Kehaulani Esch, Esq.  
Ombudsperson for American Indian Families