

Comparison of 2009 and 2012 reviews of Native American children in state custody

Overview

In 2009, state and tribal child welfare staff engaged in a review of all open cases of Native children in state custody. Twenty-four cases were reviewed in 2009, and 15 cases were reviewed in 2012. In both reviews, more than 60 percent of cases were from the two most recent years, indicating that the results of the review can be considered to reflect more or less current practices (as opposed to being skewed by “older” cases in which practices may have been less adherent to ICWA).

The reports associated with these reviews are essentially internal documents, although they have been shared with the TRC through Esther Attean. It also should be noted that although I draw conclusions below based on numbers of measures that had positive, negative and no change from 2009 to 2012, the instrument used for the case review is not designed for this type of analysis. In other words, it is very likely a “weighted” instrument in the sense that the questions are not evenly distributed across the various areas evaluated. Having said that, I still think the analysis below provides a valuable “pulse check” of collaborative behavior on the part of the state.

As the 2012 report concluded, the strongest areas were in the assessment phase: notification of the tribe, invitation of tribal child welfare staff to family team meetings, and state DHHS attempt to involve tribal child welfare staff at the beginning of an assessment. All three of these measures occurred in greater than 70 percent of cases. However, no other measures exceeded 70 percent. In other words, only three out of fifteen reported measures had outcomes of 70 percent or greater. (Sixteen measures were reported in total in the 2012 report, however, one of them only said that the measure had a positive outcome in an unspecified “majority of cases.”)

The largest positive change occurred in state DHHS involvement of tribal child welfare staff in case planning -- a 26 percent improvement from 2009 (41 percent to 67 percent). Involvement of tribal child welfare staff at the beginning of an assessment was the second largest positive change (from 58 percent to 80 percent).

However, the largest overall change marked a decrease in collaboration. Joint activity (between state and tribal staff) in choosing a foster care placement decreased from an encouraging 92 percent in 2009 to 60 percent in 2012. The 2012 report does not attempt to interpret this decrease, other than to say that “there was a lack of documentation” (p. 4), suggesting that rather than there being an actual decrease, there was a decrease in the record-keeping of joint activity.

Additionally, for seven of the measures, there was almost no change at all from 2009 to 2012. Significantly, five of those seven measures remained below 60 percent in 2012, suggesting that areas that were clearly in need of improvement in 2009 failed to improve.

Finally, there was an overall decrease in the frequency of contact between state and tribal child welfare staff from 2009 to 2012, with 20 percent of cases in 2012 having no record of any contact at all, compared to 12 percent in 2009.

In summary, the 2012 case review presented a picture of state-tribal collaboration in which there are pockets of improvement and strengths, but overall much more improvement is needed, and little progress has been made since 2009. In addition, there was a concerning decrease in the frequency of contact between state and tribal child welfare staff.

Detailed comparison of results of the review

- Where the cases originated from by OCFS Districts (2009):

| OCFS District | Number of Children |
|-----------------------------|---------------------------|
| 1 (York) | 1 |
| 2 (Cumberland) | 4 |
| 5 (Skowhegan & Kennebec) | 3 |
| 6 (Piscataquis & Penobscot) | 4 |
| 7 (Hancock & Washington) | 5 |
| 8 (Aroostook) | 7 |

- Where the cases originated from by OCFS Districts (2012):

| OCFS District | Number of Children |
|-----------------------------|---------------------------|
| 2 (Cumberland) | 1 |
| 4 (Midcoast) | 2 |
| 6 (Piscataquis & Penobscot) | 1 |
| 8 (Aroostook) | 11 |

Review outcomes for assessment phase

| Assessment review outcomes | 2009 | 2012 |
|---|--|-------------|
| Intake asked if ICWA applied to the family | 50% | 53% |
| DHHS notified the tribe by phone | 79% | 87% |
| DHHS staff tried to involve tribal child welfare staff at beginning of assessment | 58% | 80% |
| No evidence of any FTM | 33% (In an additional 3 cases, FTMs were not held) | 27% |

| | | |
|--|-------------------------------|--|
| | for 2.5 years into the case.) | |
| Where FTMs were held, tribal child welfare staff were invited | 69% | 71% (In majority of cases, tribal child welfare staff not involved in scheduling, but rather were told when the meeting was happening.) |
| State workers asked tribal child welfare staff about inviting other people to FTM. | 1 case (or 4%) | 0% |
| FTMs were co-facilitated by state and tribal child welfare staff. | No evidence of this. | Not included in 2012 report. |
| State workers asked tribal child welfare staff's input on FTM agenda items. | No evidence of this. | Not included in 2012 report. |

Review outcomes for foster care

| Foster care review outcomes | 2009 | 2012 |
|---|---------------------------------|---------------------------------|
| State child welfare staff notified tribal child welfare staff (by phone or letter) that petition was filed. | Unspecified "majority of cases" | Unspecified "majority of cases" |
| Choice of placement was a joint activity. | 92% | 60% |
| Child was placed in a Native American foster home. | 50% | 53% |
| Child not placed in a Native American foster home was placed with non-Native relative. | 25% | 14% |
| Child placed with a non-Native relative and brought to cultural events. | 58% | 57% |
| Tribal child welfare staff invited to every FTM. | 41% | 54% |
| Tribal child welfare staff included in setting time/date of FTM. | 33% | Not included in 2012 report. |
| Tribal child welfare staff | 8% | Not included in 2012 report. |

| | | |
|---|--|------------------------------|
| co-facilitated FTM. | | |
| Tribal child welfare staff asked who else should be invited to FTM. | Either 0% or 4% (1 case). The reporting is unclear for this measure. | Not included in 2012 report. |
| Tribal child welfare staff involved in case planning. | 41% | 67% |
| Tribal child welfare staff involved in permanency planning. | 66% | 66% |
| Tribal child welfare staff present at all court proceedings. | 54% | 64% |

Review outcomes for frequency of contact

| Frequency of contact between state and tribal child welfare staff | 2009 | 2012 |
|--|-------------|-------------|
| At least monthly | 41% | 33% |
| Every other month | 12% | 6% |
| Less than every other month | 33% | 47% |
| No evidence of contact | 12% | 20% |

Review outcomes for cultural bias/white privilege

| Evidence of cultural bias/white privilege | 2009 | 2012 |
|--|-------------|------------------------------|
| Incidence of cultural bias/white privilege | 0% | Not included in 2012 report. |