The passage of the Every Student Succeeds Act (ESSA) brought about several key provisions, which aim to better support underserved children. Specifically, children in foster care, who are some of the most educationally disadvantaged students. ESSA prioritizes foster care student performance by requiring state educational agencies (SEAs) to collaborate with child welfare agencies (CWAs) in order to track how students in the foster care system are doing academically. According to ESSA, SEAs are required, for the first time ever, to report annually on student achievement and graduation rates, for students in foster care. These new provisions are as follows:

**Foster Care Provisions in ESSA**

- Children in foster care must remain in their school of origin, unless it is determined that to do so is not in the child's best interest. A best interest determination must be made, and be based on all relevant factors.

- If it is not in the child's best interest to remain in the school of origin, the child must immediately enroll in a new school. All local education agencies (LEAs) must eliminate any barriers for immediate enrollment, including the student not having all of the required or necessary paperwork. The LEA is responsible for contacting the school of origin to obtain the students records.

- LEAs must collaborate with CWAs to develop and implement clear written procedures for how transportation will be provided, arranged, and funded for the duration of a child's time in foster care.

- Each SEA must designate a point of contact (POC) for CWAs. There are similar provisions which require LEAs to also designate a POC. Through the POC, CWAs (including Indian Child Welfare workers) have the ability to advocate for the children in foster care, and to work with the LEAs to ensure the children are getting the education they deserve.

**Foster Care Provisions in McKinney-Vento Homeless Assistance Act**

Subtitle VII-B of The McKinney-Vento Homeless Assistance Act authorizes the federal Education for Homeless Children and Youth (EHCY) Program, and is the primary piece of federal legislation related to the education of children experiencing homelessness. It was reauthorized in December 2015 by Title IX, Part A, of ESSA. The U.S. Department of Education allocates McKinney-Vento funding annually to states based on the state's proportion of ESSA Title I, Part A federal allocation.

- The phrase “awaiting foster care placement” was removed from the McKinney-Vento Homeless Assistance Act's definition of homeless children.

- After December 2016, children “awaiting foster care placement” shall be entitled to the same school stability and immediate enrollment protections of ESSA.

- Some children in foster care may still be eligible for McKinney-Vento services (e.g., children who are living in transitional shelters or motels).

**Foster Care for Native Students through Indian Child Welfare Act**

The Indian Child Welfare Act (ICWA), a federal law passed in 1978, addresses the alarmingly high number of Indian children being removed from their homes by both public and private agencies. Research found 25%-35% of all Native children were being removed and, of that amount, 85% were being placed outside of their tribal families and communities. Congress' intent under ICWA was to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families” (25 U.S.C. § 1902). ICWA sets federal requirements, which apply to state foster care, guardianship, termination of parental rights, and adoption proceedings involving an Indian child who is a member of, or eligible for membership in a federally recognized tribe.
Disproportionality of American Indian and Alaska Natives in Child Welfare Nationally

The latest data, published in 2016,7 showed the following:

- During FY 2016 two percent of all children entering foster care were Native children;
- During FY 2016 only two percent of all children exiting foster care were Native children; and
- at the end of FY16 two percent of children remaining in foster care were Native children.

The total Native population in the United States represents about 1.6% of the nation’s population. When compared to other racial/ethnic groups, the two percent of Native children either already in foster care, or entering foster care is disproportionately high. Similarly, when only two percent of Native children are exiting foster care, this is disproportionately low, relative to other racial/ethnic groups.

Putting these numbers in a national context, Native children are placed into foster care at a rate 2.7 times greater than their proportion in the general population.8 Native children make up about 0.9% of all children in the United States, and yet they represent about 2.1% of all children placed in foster care. In comparison, white children are underestimated across the country at a rate of 0.8 times lower than their proportion of the general population. White children make up about 52% of all children in the United States, but only about 42% of all children placed in foster care.9

Oklahoma Indian Child Welfare Data10

Between FY14 to FY17, Oklahoma saw an overall decrease in the numbers of children going into foster care, and an increase in children leaving foster care; both positive outcomes for children. Several reasons have contributed to this outcome: increased funding into comprehensive home-based services; quicker reunification of families; Intensive Safety Services funded through Title IV-E federal waiver; and focused attempts to find permanent placement (adoption or guardianships), when the child cannot return home.

In FY17, Oklahoma had a total of 9,923 children in foster care. Of this total 2,117 were Native children. Native children represented about 21% of children in foster care, in Oklahoma. Native children make up approximately 13% of Oklahoma’s children under the age of 18, and 21% of these children were the in the foster care system. This gives Oklahoma a disproportionality index11 of 1.6. Native children are overrepresented in the foster care system when compared to other racial/ethnic groups.

ESSA, Tribal Consultation, and Foster Care

While ESSA has returned much of the authority and responsibility for setting standards on how to effectively give students a quality education to the states. It has also required SEAs and LEAs to consult with federally recognized tribes on the state’s ESSA plans, and any substantial change to the state’s ESSA plans related to educating Native students. Local School districts are required to consult with tribes before submitting any plan for a program covered by ESSA. Similarly, local school districts, which receive more than $40,000 for Title VI or have over 50 percent Native students must hold tribal consultations.

Through this consultation process, tribal leaders can advocate for Native students in foster care. Tribal leaders can ensure Native Students are getting an equal opportunity for a quality education. It will be important for Indian Child Welfare workers to share data, educate tribal leaders on their programs, and what is needed in the schools for Native students in foster care.

Resources

National Indian Child Welfare Association
Phone: (503) 222- 4044
Website: https://www.nicwa.org/

Education for Homeless Children and Youths Program
U.S. Department of Education
Phone: (202) 453-6777
Website: www2.ed.gov/programs/homeless/index.html

National Center for Homeless Education (NCHE)
Phone: (800) 308-2145
Website: http://nche.ed.gov/

Endnotes


6 https://www.nicwa.org/about-icwa/

7 Adoption and Foster Care Analysis and Reporting System (AFCARS) FY 2016 data

8 Disproportionate Table. National Indian Child Welfare Association. 2017


11 http://www.casaforchildren.org/site/c.mtJSJ7MPisE/b.8371205/k.3AEACalculating_Disproportionality.htm