

# Ensuring Meaningful QEW Testimony

October 1, 2024



# Introductions

- Jeffrey Adams, Training Coordinator - OCLA
  - Sonja Ulrich, DSW, MSW - CW Consultant
  - Nicole Miller, MA, CDE® - CW Consultant
- 



# Historical Background

- Historical belief American Indian/Alaskan Native (AI/AN) people are the inferior race.
- Programs designed to assimilate Indians into white culture.
  - Reservation Boarding schools, first in Yakima, WA, in 1860.
    - Compelled adoption of values of white society.
    - Saved through erasing their birth culture.
  - Off-reservation schools.
    - Americanized, braids cut off, clothing exchanged, new Anglicized names, diets changed, native languages forbidden.
    - Forced conformity with gender roles.
    - Summers domestic labor and harvesting.
    - Punishments included deprivation of privileges, corporal punishment, and diet restrictions.
    - Schools were poorly taught, overcrowded, poor sanitation, malnutrition, stress, emotional trauma and rampant physical and sexual abuse.

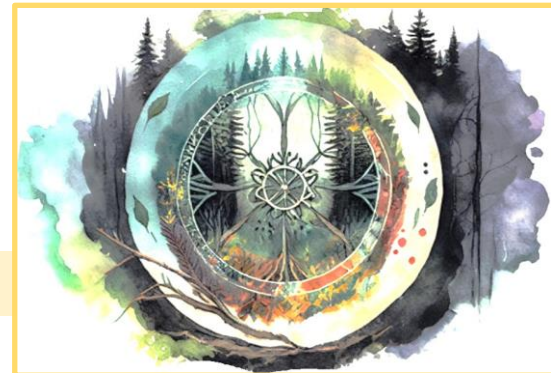
## **'Crying for their parents': More than 900 children died at Indian boarding schools, U.S. report finds**

**Debra Utacia Krol and Marc Ramirez** USA TODAY

Published 7:51 p.m. ET July 30, 2024 | Updated 1:37 a.m. ET Aug. 1, 2024



A federal investigation has confirmed that more than 900 American Indian, Alaska Native and Native Hawaiian children perished in U.S. government [boarding schools](#) from 1819 to 1969, acknowledging that the actual toll is undoubtedly higher and recommending an official apology.





# Historical Background

- 1950's and 1960's.
  - Contraception, abortion clinics, fading stigma on unwed mother's led to a lack of white adoptable children.
    - Instead of “nudging” toward whiteness, the government removed child and placed them with white families.
    - Emotional appeals by the government to adopt American Indian Children.
    - Examples of biases:
      - Unwed parents, deviant extended families, crushing poverty, and substance abuse.
      - Alleged moral and cultural failings were the result of government actions and consequences of history.



# Historical Background

"Illegitimacy among the Indian peoples is frequently acceptable, and the extended family is by no means extinct. The unwed mother may bring her child home to be cared for her herself, her family, or some relative, and he may be successfully absorbed by the tribe. [F]or [only] a small percentage of these children, a plan can be developed on the reservation for their care... for the majority, resources outside the reservation must be found."

- *Thomas Lyslo, BIA Employee*

"Based on available records, the Department concludes that at least 973 documented Indian child deaths occurred in the Federal Indian boarding school system," the report commissioned by U.S. Interior Secretary Deb Haaland said.



# Passage of ICWA



- 1970's Congress could no longer ignore the alarmingly high percentage of Native American families that were being broken apart (approx. 25-35%).
- Most of these children were destined for placement in non-Indian foster and adoptive homes or other non-Tribal institutions (approx. 90%). 25 USC §1901(4).
- Congress was compelled to pass the **Indian Child Welfare Act. (ICWA)**
  - ICWA imposed heightened protections.
    - Codified basic due process rights such as notice, a meaningful opportunity to be heard, and professional counsel in involuntary proceedings. 25 USC §1912.
    - Included placement preferences within the child's tribal community, establishing a higher standard for removing children from their home and terminating parental rights, and ensuring that removal and termination are supported by the testimony of a Qualified Expert Witness (QEW). *In re Dependency of Z.J.G.*, 196 Wn.2d 152, 173-174 (2020).

# ICWA & the QEW



- **ICWA prohibits:**
  - The foster care placement of an Indian child “in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” 25 U.S. Code §1912(e).
  - Termination of Parental Rights (TPR) “in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.” 25 U.S. Code § 1912(f).

# ICWA & the QEW

- ICWA does not define “Qualified Expert Witness” (QEW) or explain what testimony such a witness must provide. *State v. Cissy A.*, 513 P.3d 999, 1009 (Alaska 2022), see also, *State ex rel. Children, Youth & Families Dep't v. Douglas B.*, 2022-NMCA-028, 16 (N.M. 2021).
- The BIA has adopted persuasive, non-binding regulations that add specificity to the expert witness requirement. See *State v. Cissy A.*, 513 P.3d 999, 1009 (Alaska 2022). But see, In *Loper Bright Enters. V. Raimondo*, the United States Supreme Court overruled *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).
- **A QEW must testify to:**
  - Whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
  - And should testify as to the prevailing social and cultural standards of the Indian child's Tribe. See 25 CFR § 23.122(a).
  - Active Efforts.





# WICWA & the QEW



- Defines a QEW as “a person who provides testimony ... to assist a court in the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child.” RCW 13.38.130(4)(a).
- Where the child's Indian tribe has intervened, entered into a local agreement with the department for the provision of child welfare services, and the department is the petitioner, the tribe must be notified and offered an opportunity to identify a tribal member or other person to testify regarding tribal customs as they pertain to family organization or child rearing practices. RCW 13.38.130(4)(a).
- A QEW often testifies to the provision of active efforts. *See, In re the Matter of the Dependency of R.D., 27 Wn. App. 2d 219, 235 (2023), In the Matter of the Welfare of: C.J.J.I., No. 39593-6-III (unpublished).*

# WICWA & the QEW



- A "qualified expert witness" meets one or more of the following requirements in descending order of preference:
  1. A member of the child's Indian Tribe or other person of the Tribe's choice who is knowledgeable regarding Tribal customs as they pertain to family organization or child rearing practices for this purpose.
  2. Any person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe.
  3. Any person having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and child rearing practices in Indian tribes with cultural similarities to the Indian child's tribe; or
  4. A professional person having substantial education and experience in the area of his or her specialty. RCW 13.38.130(4)(b).

# WICWA & the QEW

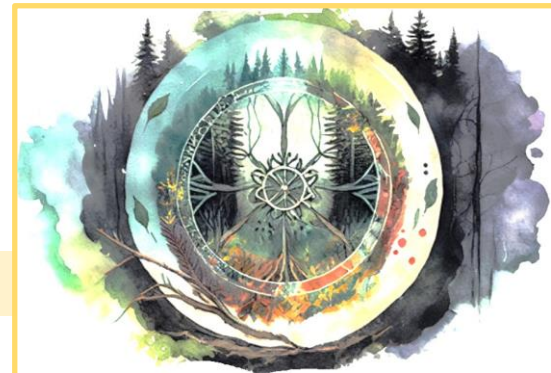


- Prohibits, when the petitioner is the department, the currently assigned caseworker or their supervisor from testifying as a QEW. RCW 13.34.130(c). However, this limitation does not extend to other department employees. RCW 13.38.130(c).
- Presumes that an expert should be knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices of the Indian child's tribe. See RCW 13.38.130(4)(b)(i)-(ii).
- Stops short of requiring this knowledge and qualifies anyone who meets one of the innumerate options, including any professional person having substantial education and experience in their specialty. RCW 13.38.130(4)(b)(iv).

# What is the problem...

- A 2019 case review report released by DCYF found that the agency had contacted a child's Tribe to identify a Qualified Expert Witness in only 42 percent of the case files reviewed.
- DCYF also found a QEW declaration in less than half of its case files.

***Greater scrutiny must be given to the QEW!***

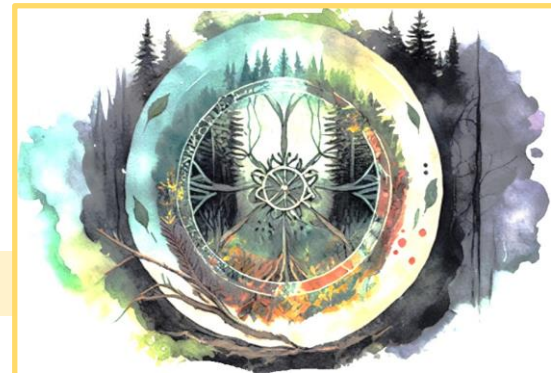




# What is the problem...

[The qualified expert witness,] Richard England's declaration is also unhelpful in establishing active efforts. While Mr. England [the QEW,] claimed the Department engaged in active efforts, he failed to substantiate this claim. Mr. England's declaration contains a paragraph listing the referrals made to the mother. But no mention is made of any affirmative steps the Department took to help the mother act on these referrals. Rather, Mr. England goes on to state that the mother "needs to take responsibility for her behaviors and come to understand the detriment that she has caused to her daughter through her inappropriate and dangerous behaviors." This conclusory expectation, that the mother find within herself the wherewithal to overcome her resistance to services, runs contrary to the expectations of ICWA and [the Washington Indian Child Welfare Act].

- *In re the Matter of the Dependency of R.D.*, 27 Wn. App. 2d 219, 235 (2023)



Question:

When is the  
testimony of a  
QEW required?

---

– In short, the answer is not entirely  
clear.



# Question: Must a QEW possess expertise beyond that of the normal social worker?

## Answer— Yes.

- In *Fisher*, Division 1 of the Court of Appeals addressed a challenge to the testimony of the QEW proffered at termination of parental rights hearings.
  - The phrase 'qualified expert witnesses' is meant to apply to expertise beyond the normal social worker qualifications" and dismissed the challenge
  - The court found that the trial court did not abuse its discretion in qualifying the expert witnesses because one had been employed as a caseworker supervisor of the foster care program in the Indian Center for three years and the other witness was a mental health counselor for the Puyallup tribe and had been employed as a foster care caseworker by the Seattle Indian Center for two and a half years. In re Welfare of Fisher, 31 Wn. App. 550, 553 (1982).
- Consistent with federal guidance and State law, DCYF policies prohibit employees from serving as a QEW on cases that they are assigned to or responsible for overseeing. DCYF Policy 2.40.60 Policy 3(a)(i)-(ii).
  - These policies go further to prohibit employees from serving as a QEW on cases that are located in their region or where the employee has personal knowledge of, or association with the case, even if they are from outside of the region. DCYF Policy 2.40.60 Policy 3(a)(iii).
  - DCYF policy directs DCYF to identify a QEW at the 30-day shelter care. DCYF Policy 2.40.60 Policy 3(b).



**Question: Although the language of ICWA requires the testimony of “qualified expert witnesses” in the plural, is only one QEW is sufficient to meet ICWA’s requirements?**

**Answer— Yes.**

- In *Roberts*, Division 1 of the Court of cited an Alaska opinion to conclude that “[t]he use of the plural form, "expert witnesses," in the ICWA does not mean, however, that the testimony of more than one qualified expert witness is required.” *Id.* at citing, *D.A.W. v. State*, 699 P.2d 340, 342 (Alaska 1985).





**Question: When a QEW testifies “as to the prevailing social and cultural standards of the Indian child's Tribe,” must the same QEW testify to the “child's continued custody by the parent or Indian custodian [being] likely to result in serious emotional or physical damage?”**



**Answer– No.**

- In *State v. Cissy A.*, the Alaska Supreme Court held that you could have multiple QEWs, one could testify as to the prevailing social and cultural standards, and another could testify to the likelihood of serious emotional or physical damage. *State v. Cissy A.*, 513 P.3d 999, 1016 (Alaska 2022).

**Question: Must the QEW testify that the “child's continued custody by the parent or Indian custodian [being] likely to result in serious emotional or physical damage” and “as to the prevailing social and cultural standards of the Indian child's Tribe?”**

**Answer— No.**

**Question: How broad is the exception to required QEW testimony “as to the prevailing social and cultural standards of the Indian child's Tribe?”**

**Answer—Limited**

- *In re Interest of Natasha Mahaney v. Mahaney*, 146 Wn.2d 878, 883-884 (2002). The Supreme Court, citing sympathetically to an Oregon case, *State ex rel. Juvenile Dep't of Lane County v. Tucker*, 76 Or. App. 673, 683, 710 P.2d 793 (1985), adopted broad language stating “[w]hen expert testimony is offered that does not inject cultural bias or subjectivity, courts have held that no "special knowledge of Indian life" is required. *Id.*

## Response Continued....

- The Alaskan Supreme Court addressed a similar question, also in *State v. Cissy A.*
- *The BIA explained the importance of both the "must" and "should" prongs of its expert witness requirement.*
  - Congress's purpose in passing ICWA was to "make sure that Indian child-welfare determinations are not based on 'a white, middle-class standard'" — especially because "States have failed to recognize the essential Tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families."
  - Requiring cultural expertise "ensures that relevant cultural information is provided to the court and that the expert [causal relationship] testimony is contextualized within the Tribe's social and cultural standards."
- *However, cultural expert testimony "should normally be required," it "may not be necessary if such knowledge is plainly irrelevant to the particular circumstances at issue in the proceeding."*
  - *The BIA Commentary provides only one example where cultural expert testimony would be plainly irrelevant: when a parent "has a history of sexually abusing the child," "a leading expert on issues regarding sexual abuse of children may not need to know about specific Tribal social and cultural standards in order to testify . . . regarding whether return of a child to [that] parent . . . is likely to result in serious [harm]." Consistent with this guidance from the BIA, we have held that the exception to the requirement of cultural testimony is "very limited."* - *Cissy A.*, 513 P.3d 999, 1010.

## Question: Must the QEW possess specialized knowledge or understanding as to the prevailing social and cultural standards of the Indian child's Tribe?

Answer– No. Status as a qualified expert witness under ICWA is established with respect to persons affiliated with a tribe, whether employed by a tribe, designated by a tribe to testify as an expert in the proceeding, or a member of a tribe.

- In *L.N.B.-L.*, Division 2 of the Court of Appeals applied *Mahanay* and rejected an argument that the qualified expert witness must possess specialized knowledge or understanding of Squamish or Nooksack culture. *In re Welfare of L.N.B.-L.*, 157 Wn. App. 215, 245 (2010). Citing to *Mahaney*, the Court of Appeals noted ICWA has been interpreted to allow some latitude where experts are concerned.
  - However, *L.N.B.-L.* does not stand for the broad proposition that no knowledge of prevailing social and cultural standards of the Indian child's Tribe is required. In *L.N.B.-L.*, the Court of Appeals notes:
  - *Despite Paez's difficulty describing a Nooksack family unit, she qualifies as an expert under subsection (i) of the BIA guidelines. Paez is a Nooksack tribal member ... [she was] The tribe's official designation ... as an expert ... Additionally, Paez, a 40-year resident of the tribal community, has worked with over 75 Indian families in the social services setting, has served as ICW case manager for 7 years, and has received training on ICWA.*



## Response Continued....



- In an unpublished opinion, a mother challenged the testimony of a QEW's knowledge of tribal customs. K.S., 2017 Wash. App. LEXIS 1464 at 18 (2017) (unpublished). In KS, the QEW was reluctant to call herself an expert.
  - *I ... would not call myself an expert, but some [inaudible] besides being the only one. But, I-I feel like I have a long way to go.*
  - *[The QEW] proceeded to testify that she is the sole Indian Child Welfare Act social worker for the Ketchikan Indian Community and that she is the assigned caseworker for KS's case. [The QEW] said she had been actively involved in seeking a relative tribal placement for KS. She testified that she is a member of the Ketchikan Indian Community and that she is familiar with the customs of the tribe and how those customs relate to child rearing. She testified that although she is not an elder in the tribe, she consulted with an elder about KS's placement.*
- The Court of Appeals held that:
  - *We surmise that she was reluctant to describe herself as an expert. Even so, [The QEW] clearly had knowledge of and sensitivity to Indian culture and expertise beyond the usual social worker qualifications...*

# Question: Can the testimony of the cultural expert be too vague and generalized to support the termination of parental rights?

## Answer - Yes

- See:
  - *In re Dependency of R.D.*, 27 Wn. App. 2d 219, 235 (2023).
  - In Matter of the Welfare of CJI, No 39593-6-III (Aug. 22, 2024).
- *Cissy A.* the Alaskan Supreme Court further illustrates this point.
  - A cultural expert's testimony must be grounded in the issues or questions presented in the case. *"Such grounding can be facilitated in a variety of ways, including allowing the expert to review relevant records, providing the expert with information, and asking detailed questions that provide the expert with important context. Without context, one could not expect the cultural expert to understand what values or practices may be relevant to the situation."*
  - *The cultural experts in the present cases were not afforded any meaningful opportunity to learn or review relevant facts about the families or safety risks at issue. Nor did OCS provide any specific or detailed information in its questioning of the experts...*
  - *[The] cultural expert Kaleak admitted that she was not "very familiar with the facts" of the case and had only ten minutes to review the petition.*

## Response Continued....

- Cissy A. the Alaskan Supreme Court further illustrates this point.
  - *Without information regarding the facts of the case or detailed questioning, the experts were forced to discuss tribal practices in very general terms that were not helpful to the superior court. The questions OCS asked the experts in each case were extremely cursory and realistically could only be answered in one way. In each of the cases, OCS asked the cultural experts some variation of: Is "substance abuse, neglect, abandonment, domestic violence, and mental illness . . . within the cultural values of [the Tribe]?" In each of these cases, the cultural experts predictably indicated that those behaviors or difficulties are not within the cultural values of their Tribes.*
  - *... As the Nenana Native Village suggests in its brief, keeping children safe is likely an important value in all cultures. A statement that the Tribe values keeping children safe is not helpful to a trier of fact. Similarly, it is not enough to simply ask whether a certain type of conduct (e.g., "substance abuse" or "domestic violence") is a "tribal value."*
    - We do not terminate parental rights just because parents abuse alcohol or use illegal. Other questions like how substance abuse is defined within the Tribes and what interventions would have been available to the families within the Tribes are more helpful to the trier of fact.
  - *Holding: based on the extremely general nature of the cultural expert testimony, it was not clearly erroneous for the superior court to afford the testimony no weight.*

# From Law to Practice

---





# History of QEWs

- Helps prevent unwarranted removals of Native American children by ensuring cultural factors are properly considered
- Ensures the cultural, familial, and tribal ties of Native American children are preserved during child custody proceedings.
- Intended to serve as a safeguard against biases that might otherwise influence child welfare proceedings.
- Keeping Native American children connected to their cultural and tribal heritage, upholding ICWA
- Cases involving the foster care placement or termination of parental rights

[Source: 25 U.S.C. § 1912.](#) Pending court proceedings



# Who Can Be A QEW?

- ICWA does not define who qualifies under the QEW requirement
- BIA Guidelines (non-binding) list three types of experts who would be qualified under the Act.
  1. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family or organization in childrearing practices.
  2. A lay expert witness having substantial experience in the delivery of child and family services to Indians and an extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe.
  3. A professional having substantial education and experience in the area of his or her specialty.

Source for the BIA Guidelines: [biaguide.pdf \(narf.org\)](https://www.narf.org/biaguide.pdf)



# What Qualifications Must QEWs Have?

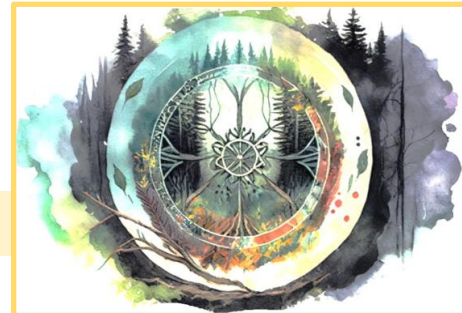


- Expertise beyond the normal social worker.
- Possess specialized **knowledge of the child's AI/AN culture and child-rearing practices**
- Individuals capable of rendering an opinion on whether an Indian child is suffering emotional or physical harm because of the actions or inactions of the parents or caretaker.
  - Indian family structure and child rearing customs or practices differ and the expert must be qualified with this knowledge.
  - Must consider that remedial active efforts to cure the behavior of the parents or caretaker may be different due to cultural differences; for example, where a child's symptoms of illness are being treated by a medicine man, rather than a doctor.
- QEWs must understand tribal child-rearing practices and be able to assess whether or not the child is at risk of harm under tribal norms.

***Most courts have required all categories of expert witnesses to have knowledge of and experience with Indian culture "to provide the Court with knowledge of the social and cultural aspects of Indian life to diminish the risk of any cultural bias." In re N.L., 754 P.2d 863, 867 (Okla. 1988).***

# If There is a Reason to Know...

- ICWA requires that if there is any reason to know the child may be covered under ICWA, ***the court must treat the case as an ICWA case*** pending verification.
  - If **Reason to Know** exists, the basis for the conclusion of the affirmative or negative must be documented (in other words – how do you know Reason to Know does or does not exist)?
- The requirements explicitly place the burden on the court to inquire at the onset of a court case if there is any reason to know the child may be an Indian, and further to instruct parties to ensure if the information is later learned that the child may be Indian, the parties must notify the court.



# Findings of a QEW



- Issue a professional opinion as to....
  - Whether ***Active Efforts*** were made to:
    - Prevent the removal of children
    - Support timely reunification
    - Support timely permanency
  - Whether the continued custody of the child by the parent or Indian Custodian is likely to result in ***serious emotional or physical damage to the child***



# Active Efforts

---

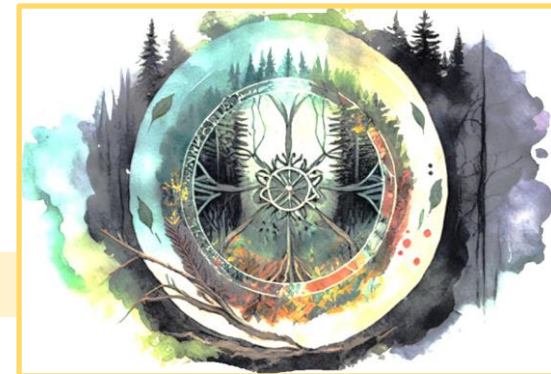


# Why are they important?

Improving delivery of Active Efforts will produce the following results:

- Reduced instances of abuse/neglect
- Reduced need to remove children from their families
- Reduced amount of time children spend in care
- Increased service delivery to families
- Reduced barriers to reunification
- Increased rate of reunification with parents
- Increased rate of children placed with relatives when they can't be placed with or reunify with parents
- Reduced recidivism of families' involvement with child welfare system

*--Lummi Child Welfare*



# What are Active Efforts?



- According to the ICWA C.F.R., “Active Efforts” is defined as:  
*“...affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. Where an agency is involved in the child-custody proceeding, active efforts must involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child’s Tribe and should be conducted in partnership with the Indian child and the Indian child’s parents, extended family members, Indian custodians, and Tribe. Active efforts are to be tailored to the facts and circumstances of the case”*
- ICWA requires the findings of active efforts be made by the court at multiple points throughout the case including efforts made to prevent the removal of the children, the timely reunification of the children, and the resolution of the case.



## Examples from Handout:

- Comprehensive assessment
- Identify, notify and invite tribal reps
- Family search
- Culturally appropriate services
- Frequent visits
- Sibling connections
- Community resources
- "Alternative services"

## Issues:

- These services are reasonable
- It is the *actions* to work with the family through affirmative, thorough and timely actions that make them **ACTIVE**
- **Services must be individualized to the needs of the family receiving services.**

## Active Efforts for ICWA

**ACTIVE EFFORTS:** Affirmative, thorough, and timely actions aimed at preserving/reuniting an Indian child with family.  
**INDIAN CHILD WELFARE ACT (ICWA):** Protects the interests of Indian children and promotes stability and security of tribes and families. Establishes minimum standards for removing and placing Indian children in homes that reflect their cultural values.



**Comprehensive Assessment:**  
Conduct a thorough assessment of the circumstances of the Indian child's family to prevent removal or promote timely reunification.



**Identify, Notify, and Invite:**  
Involve tribal representatives once the child's parents indicate tribal heritage and invite them to Family Team Decision Making, Shared Planning and Permanency Planning meetings, etc.



**Family Search:** Thoroughly search for the child's extended family. Contact and consult with them to provide family structure and support for the family.



**Culturally Appropriate Services:** Provide culturally appropriate family preservation strategies, encourage use of remedial services, and aid parents in accessing services to overcome barriers.



**Frequent Visits/Family Time:**  
Support regular Family Time visits in natural settings.



**Siblings:** Take steps to keep siblings together whenever possible. If separation occurs, establish visits and lines of communication.



**Monitor:** Monitor progress and participation in services. Celebrate successes and respond appropriately to challenges.



**Community Resources:**  
Identify and connect parents/families to community resources (housing, financial, transportation, mental health, substance use, peer support).



**Alternative Services:**  
Consider creative ways to address the needs of the parents and family if optimal services are unavailable.



**Post Reunification:** Provide post-reunification services and monitoring. Prioritize the best interest of the child.



# Resource



## Lummi Child Welfare



## Comprehensive Guide to Active Efforts

Specific to WA State practice

[Comprehensive-Guide-to-Active-Efforts-Lummi-Nation-Published-3-26-21.pdf \(wacita.org\)](#)



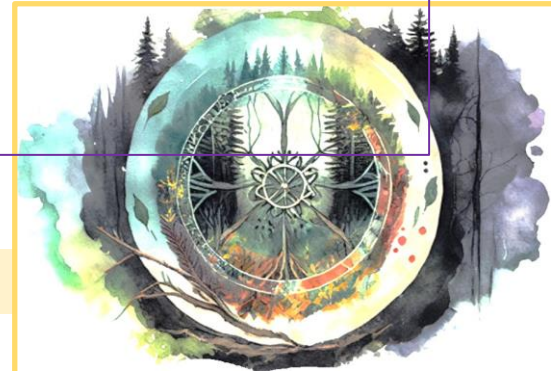
# Examples – Active vs. Reasonable

## *Active efforts:*

- Assisting parents in working with the Tribe to complete enrollment, if needed
- Working with a local Tribe to provide services that may better meet the needs of the client through non-Western and decolonized service opportunities
- Ensuring family time occurs in a culturally responsive setting such as the family home, a relative's home or a place familiar and comfortable for the family
- Holding meetings outside government buildings
- Actively seeking out parents in person, going to their home, using social media, and diligent efforts to locate and engage and build relationships.

## *Reasonable efforts (at best):*

- Emailing a client who does not have a phone and documenting it as communication attempts
- Failing to go to the clients home until you need to serve them with termination paperwork
- Sending "service letters" to last known addresses that may not be updated
- Standard statements on case plans not specific to the needs of the child or family
- Worker relying heavily upon the use of text messaging as a form of communication with the parents.
- Developing case plans focused on Western methods of healing (e.g. NA/AA)



# Case File Example- Review Case Plans


- **Review the case plans and court reports**
  - Often repeated statements (copy/paste) from the initial report to each subsequent one.
  - Speaks to general cultural activities, but does not describe any specific cultural services, connections, or efforts to provide cultural connections.
  - Often caregivers are non-Native families providing the "cultural activities" without oversight from the department to ensure cultural activities are actually occurring
  - Cultural activities for children can be linked to positive parent-child relationships and support of a child/youth's sense of self promotes cultural connection and healing.

## **CULTURAL/CONNECTIONS:**

Caregivers shall ensure child has age appropriate exposure to her cultural activities. Child is placed in the same pre-adoptive home with her 3 siblings.



# Case File Example – "Active Efforts Log"

  
STATE OF WASHINGTON  
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

1.1 **Child's Indian Status:**

☒ Based upon the following, the petitioner knows or has reason to know the child is an Indian child as defined in RCW 13.38.040 and 25 U.S.C. § 1903(4), and the Federal and Washington State Indian Child Welfare Acts do apply to this proceeding: \_\_\_\_\_

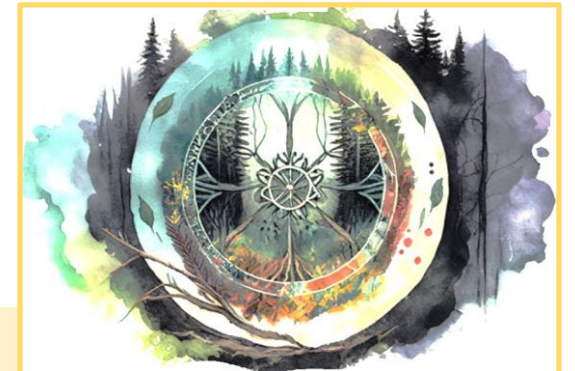
☐ The petitioner has made the following preliminary efforts to provide notice of this proceeding to all tribes to which the petitioner knows or has reason to know the child may be (1) a member or (2) eligible for membership if the biological parent is also a member: \_\_\_\_\_

1.2 **Active Efforts:** DCYF has made the following active efforts to prevent the child's removal from the parent's home:

Active Efforts Log

Date	Effort
6/11/2024	Grandmother, [REDACTED] reached out because the children had not showed up to the visit. SW [REDACTED] called, emailed, and sent texts to the visit supervisor and reached out to Ramona's supervisor to find out where the children were. SW [REDACTED] was able to get ahold of [REDACTED] and found out that [REDACTED] cancelled the visit. Both [REDACTED] and [REDACTED] were not happy about the visit just being cancelled.
6/11/2024	SW [REDACTED] sent housing resources to [REDACTED] and [REDACTED]. They were women DV shelters.
6/13/2024	SW [REDACTED] sent contact information for DV assistance through the [REDACTED] Tribe to do an intake.

"SW sent housing resources to [the mother]. They were women DV shelters."

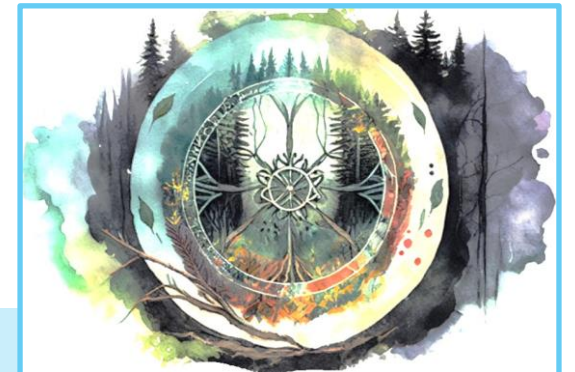


# Case File Example – "Active Efforts Log"

6/18/2024	SW [REDACTED] provided [REDACTED] with the DV women shelter.
6/18/2024	SW [REDACTED] has [REDACTED]. SW [REDACTED] reached out to him to inform him that [REDACTED] had to move placements the day prior. SW [REDACTED] wanted to make sure that he had her number. SW [REDACTED] also reminded him of his court the next day at 2:30pm. SW [REDACTED] reminded him to sign ROI's and provided a copy of the business card for the information he will need for the ROI.
6/18/2024	SW [REDACTED] informed [REDACTED] of additional native ancestry she has. Ogala Sioux.
6/20/2024	SW [REDACTED] informed [REDACTED] of the services that are being requested.
6/20/2024	SW [REDACTED] arranged a phone call for Saturday 6/22 to take place for [REDACTED] bday.
6/20/2024	SW [REDACTED] informed [REDACTED] of the new visitation supervisor who will be taking over the visits.
6/20/2024	[REDACTED] reached out to SW [REDACTED] letting him know that he signed releases but did not know that he needed to do a collateral. He cannot afford that. SW [REDACTED] informed him that he can go to [REDACTED] and get that all completed with his Indian Health. [REDACTED] mentioned that gas, SW [REDACTED] stated that he is eligible for gas cards, he just needs to provide a start address and the address to all his services and the milage could be calculated for a total weekly. SW [REDACTED] provided him with the contact information for [REDACTED] Tribe. Also, to inform [REDACTED] Behavioral Health that he is enrolled into a tribe in Montana.
6/20/2024	[REDACTED] mentioned that he has been cleaning his house and ran out of cleaning supplies. SW [REDACTED] asked him what specifically he needed. SW [REDACTED] was able to request some cleaning supplies as we did not have the ones he specifically needed.

"SW informed [the mother] of the services that are being requested."

"SW stated that he is eligible for gas cards, he just needs to provide a start address and the address to all his services and the milage (sic) could be calculated for a total weekly."

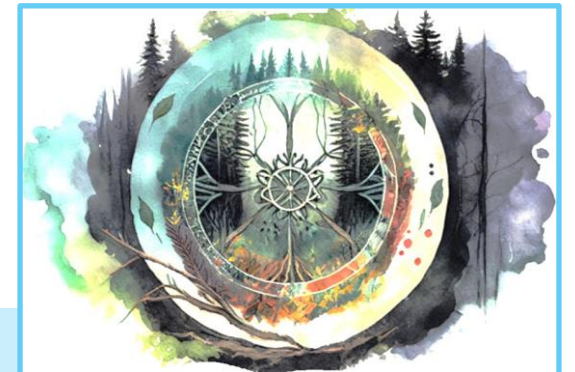




# Case File Example – "Active Efforts Log"

- The worker identified that Ms. [REDACTED] encountered some challenges when it came to engaging with domestic violence services. To address this, this worker met with Ms. [REDACTED] in person at the DCYF front office on 03/01/24 to review the domestic violence victims service resource guide, discussing various providers she can contact for assistance.
- This worker continued attempts to speak to Ms. [REDACTED] and to meet with her in person.
- This worker mailed or left service letters at the front desk with Ms. [REDACTED] gift cards for the month on 03/01/24, 04/02/24, 05/06/24, 07/01/24, and 08/01/24 as a written reminder of her recommended services to engage in.
- During home visits and meetings at the DCYF office, this worker has noticed Ms. [REDACTED] looking unkempt, with sometimes matted hair and dirty clothing. This worker has assisted Ms. [REDACTED] with this recurring issue by providing her with laundry detergent, toilet paper, cleaning products, and/or a variety of women's hygiene products available at the DCYF office on 03/01/24, 07/17/24, and 08/22/24. Additionally, this worker provided Ms. [REDACTED] with a one-time laundry referral on 03/01/24, after Ms. [REDACTED] indicated that she did not have a means to wash her clothes.
- This worker continued to directly ask the mother if she has any unaddressed needs or if there are any barriers to her success that this worker can assist with when it comes to her engagement with services.
- Identified housing as a barrier. This worker provided Ms. [REDACTED] with multiple housing resources for transitional housing, income-based apartments, and shelters to capture the current level of need she is experiencing in order to assess housing options.
- This worker has supplied Ms. [REDACTED] with various helpful resources on a monthly basis, such as lists of community based mental health providers, tribal support and services, Native American and American Indian resource guide, information on free clothing resources, and general resource guides. The general resource guide contains information on shelters, drop-in centers, free meal sites, mental health and addiction treatment facilities, food banks, clothing banks, homeless housing coordinated entry programs, and other general resources.

"This worker has assisted Ms. \_\_\_\_ with this recurring issue by providing her with laundry detergent, toilet paper, cleaning products and/or a variety of women's hygiene products available at the DCYF office." (*this parent has no running water in their home*)





# DCYF Policies and LICWAC

---



# Local Indian Child Welfare Advisory Committee - LICWAC

- The purpose of LICWAC is to:
  - Advise DCYF on case planning and services for Indian children and their families when the child or family's Tribe, Band, or Canadian First Nations is unavailable or it's a Reason to Know case.
  - Ensure DCYF complies with the ICWA, WICWA, and Tribal Memorandums of Agreement (MOA).
  - Encourage involvement of tribal nations and American Indian Organizations in case planning for Indian children when there is ***reason to know***, and a Tribe has not been determined.
  - Ensure culturally relevant resources are offered to Indian children and their families
  - Support the efforts of tribal nations to exercise their self-governance in Indian Child Welfare matters.
  - Advocate for the needs of Indian children in the development and monitoring of all DCYF case plans involving Indian children.
  - Provide case planning advice and consultation when the Indian child's Tribe, Band, or Canadian First Nations declines involvement, withdraws from involvement, or requests that the LICWAC be involved with the case on behalf of the Tribe, Band, or Canadian First Nations.

[Link: 2.50.20 Local Indian Child Welfare Advisory Committees \(LICWAC\) | Washington State Department of Children, Youth, and Families](#)

# DCYF Indian Child Welfare Policies & Draft Policies



Link to page with Draft ICW Policies and Other Resources:

- [Indian Child Welfare Policies and Procedures | Washington State Department of Children, Youth, and Families](#)

## Upcoming Policies

Draft ICW Policies (download zip file) - Effective  
July 1, 2024

- [2.40.60 Qualified Expert Witnesses for Indian Child Welfare \(ICW\) Cases | Washington State Department of Children, Youth, and Families](#)

### Policy

1. DCYF employees must obtain a QEW designated by the tribe or contracted with DCYF for the following court proceedings when DCYF is requesting out-of-home placement and there is reason to know children are or may be Indian children:
  - a. Earliest 30-day shelter care, but if not possible then, at the initial dependency fact-finding
  - b. Guardianship
  - c. Termination of parental rights (TPR)

- [2.40.50 Active Efforts and Tribal Collaboration | Washington State Department of Children, Youth, and Families](#)



—

# Serious Emotional or Physical Harm

---



# QEW - Serious Emotional or Physical Harm

- The language of ICWA is designed to protect Indian children, their families, and their cultural ties, ensuring that intervention only occurs when there is clear evidence of serious harm.
- ***"Serious emotional or physical harm"*** refers to situations where an Indian child faces a significant threat to their well-being. This harm is specifically related to the child being removed from their family or tribe, and it is used as a legal standard for determining when the state can intervene in an Indian child's custody.

## **Emotional Harm:**

- This involves psychological or mental damage that can affect the child's ability to function. Examples include trauma from separation from their family or culture, long-term psychological effects of abuse or neglect, or the negative impacts of unstable care or custody arrangements.

## **Physical Harm:**

- This refers to situations where the child is at risk of or has experienced bodily injury. It may include physical abuse, neglect, or unsafe living conditions that pose an immediate threat to the child's health and safety.





# Considerations in determining serious emotional or physical harm.....

- If no intervention, would harm be imminent?
- Are the issues really risk? Or are they truly safety?
- If the filing is a non-emergency petition or constructive removal, how can that be connected to imminency if there is no emergent?
- Are there other options available to support the children when parents are using drugs/alcohol?
- Are the circumstances of the family related to poverty?

## Example 1):

- 15 past referrals for neglect, lice, lack of supervision; multiple open cases
- 3 children all under the age of 10 with special needs
- Alleged unsanitary living environment ("smells")
- Mother recently SA assaulted at work and phone stolen; missed service appts.

## Example 2):

- 5 recent referrals for parental alcohol use and mutual parental DV in front of child
- Child is 1 year old
- Mother completes 30 day inpatient treatment and has completed UAs for two months that are clean



# Retaining a QEW

---



# What Should You Expect from a QEW you Retain?

- Review all discovery
- Have contact with the Tribe for their input
- Reach out to all parties in the case through their legal representative
  - *Ask for any information they want to add to the review for consideration*
  - *Inquire and clarify about issues related to active efforts/services, relative placement, and safety issues*
- Summarize professional opinion in writing to address the QEW required findings on custody and active efforts



# Be Aware of Pan-Indian Approach to QEWs

- QEWs contracted by DCYF who may be American Indian/Alaska Native, but cannot speak to the specific cultural standards or parenting practices of the client's Tribe
- Closely review CV/Resume for specific and legitimate experience practicing ICW and preserving families (*being a therapist does not qualify*)





# Responding to State QEW

---





# QEW Questions – Qualifications & Experience

- Have you ever visited the Tribal community in question? What was the nature of the visit? (lifting up the lack of tribal specific expertise as opposed to pan-Native stuff).
- What direct experience do you have working with the specific Tribal community in question? If you haven't, how do you know about the cultural beliefs and parenting standards? Who taught you? Who did you speak to? *(be specific about how that person would be the knowledge bearer for that lesson)*
- What direct experience do you have in child welfare that qualifies you as an ICWA expert?
  - If the response includes experience as a therapist or in substance use disorder treatment or something else that qualifies them, one option is to explore "what is their knowledge of healthy parenting skills and techniques specifically within the tribe in question?"
    - How do they know? Where did they get that information? How did they learn it? Who, within the specific community, taught them?
- Have you ever worked for the defense in Washington? In any state? How many times?
- How many cases have you sided against the petitioner? What percentage of cases?
- How much are you paid for your expertise for the petitioner? How much have you made on the current case? What is your rate of pay per hour?
- How much did you get paid by WA state to testify as a QEW in the last year?
- Have you ever worked as a Tribal ICW specialist? If yes, what types of interventions typically preserve families in the specific Tribal community which you are testifying about? If they speak generally about Tribes, then go back to drawing on the specific community the family is from *(You must apply the principle of harm reduction, the use of community to help ensure children's safety, and the tribe's specific cultural standards and values)*.



# QEW Questions – Qualifications & Experience

- What is your training in risk assessment? Where were you trained on risk assessment and how did you use the information to assess the level of risk in the case? *(Can compare lack of investigation to the facts and demonstrate a different level of risk).*
- What is your training in safety assessment? Where were you trained on safety assessment and what steps did you take to assess the level of safety in the case?
- Who did you talk to in the case? *(they should talk to all parties – shows bias only hearing the state's perspective)*
- Were there cultural aspects to the situation that the state failed to consider in seeking removal? *(as it relates to the specific culture of the tribe and the specific case circumstances).*
  - *If no, then follow-up with "what do you base your opinion on? How do you have information about the specific cultural aspects of the family?"*
- Did you see any violations of ICWA standards in this case? *(Active efforts, relative placements, etc. If they respond that there were not, point out the specific area of practice that was violated and inquire further)*
- Refer to their report for specific questions on professional opinions issued, following with probing questions to gain an understanding of what they based their decision on, and how that was best practice in that situation?



# QEW Questions – Eligibility & Removal



- Was the tribe contacted at the first threat to removal? Was the ICWA office contacted directly?
- Was there a diligent family search conducted? If not, why not?
- Was support provided to assist family members to enroll if applicable?
- Are the presenting issues primarily due to poverty related circumstances? If so, what is being done to assist the family?
- Can a safety plan and in-home services be provided to the family to prevent removal?
  - What safety plans have been tried to prevent removal?
  - What issues are preventing a safety plan in place?
- Was the removal necessary to prevent imminent physical damage or harm to the child/ren?
  - What evidence is your professional opinion based on?
  - What information did you consider in making that decision?
  - What physical damage or harm to the child would have occurred without removal? What do you base your opinion on?
- Was the removal necessary to prevent serious emotional harm to the children?
  - What evidence is your professional opinion based on?
  - What physical damage or harm to the child would have occurred without removal? What do you base your opinion on?
- Are siblings placed together? If not, why not?
- Are the children placed in an ICWA preferred placement? If child/ren are not in ICWA preferred placement, was/is there a concurrent plan and an ongoing search for an ICWA preferred placement?

# QEW Questions - Active Efforts



- Was there a comprehensive assessment with a focus on keeping the family together?
  - *If not, why not? What assessments were used to determine the family could not be together?*
  - *What evidence was provided?*
- What services were identified for the family and what services were offered?
  - *What did the department do to support the client getting to services?*
  - *How did the department engage the client to identify priority services the family requested to help them?*
- What barriers exist for the family and what has the department done to mitigate the barriers?
- Was and/or is there a diligent/ongoing search for family & extended family for placement and/or support?
- What efforts were made to partner with the Tribe in providing services and support?
- How did the department consider culture in the provision of preservation strategies? How did the department consider culture in the identification of services the family needed to engage in?
- If siblings are not together, are there consistent efforts to maintain sibling relationships? And what efforts are being made to ensure they can be moved to the same placement?
- Is parent/child contact frequent and occurring in the most natural setting? If not, why not?
- Does the family have reasonable access to any and all local social services?
- Alternative active efforts are utilized when more traditional services are not working?
- Frequent monitoring of progress and participation in services?
- What types of engagement were provided by department? (outreach, communication, etc.)
  - *Sending service letters is not active efforts*
- Was there an identification of safety plan options to support in-home services? If not, why not?

# QEW Questions - Active Efforts



- Were active efforts provided to maintain or reunite the family?
  - What were they?
- What other active efforts should have been done to prevent placement?
- What active efforts are needed to support the reunification of the family?
  - Has parent/child contact been started? If not, why not?
  - What services are in place to remove barriers to attending parent/child contact (transportation, location, etc.)
- Is the removal still necessary to prevent damage or harm? Based on what?
- Is there evidence of **meaningful** active efforts?
- Were the efforts Affirmative, Active, Thorough and Timely?
- Were active efforts provided to attend to the social and cultural standards and/or practices of the identified tribe/s?
- If the QEW is not from the Tribe, then how do they know if the active efforts attend to the social and cultural standards of the Tribe? Who from the Tribe taught you about the social and cultural standards of the Tribe?



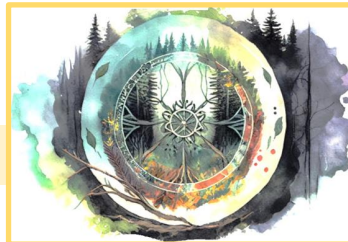
# QEW Questions – Serious Emotional & Physical

Based on my review of the information provided to me, it is my opinion that a causal relationship exists between the conditions in the parents' homes and the likelihood that continued custody of - by Ms. [REDACTED] or Mr. [REDACTED], is likely to result in serious emotional or physical damage to her.

- Describe specifically what the causal relationship is that exists. Connect the dots. In the example above the QEW spoke to the conditions in the parents home. Inquire about specifics and have them identify how the circumstances lead to serious emotional or physical harm? (*Dirty houses do not lead to this finding*).
- What is the consequence to the child if they remain? How do you know this? What is your opinion based on? What information about this specific family do you have other than what the department has provided?
- Did you talk to the parents? Did you gain other perspectives? How did you balance the information to make a finding?
- How does poverty interplay with the current situation? How do poverty and neglect interact? What is the solution to supporting families in poverty? Inquire about the specific services recommended – how does that service address the economic status of the family?
- What are the consequences to children removed from the home when it is unnecessary? How does this removal further complicate the intergenerational trauma this family has endured?
- Isn't it true that Native children are disproportionately represented in the foster care system? If so, then how do you reconcile removal of a Native child based on conditions of the home?
- What are some strengths and protective factors that you can identify about this family? (*every family has some – if they claim there are none they are not looking hard enough*)

# Additional References/Resources

- [Source for the BIA Guidelines: biaguide.pdf \(narf.org\)](#)
- Lummi Child Welfare Comprehensive Guidet to Active Efforts: [Comprehensive-Guide-to-Active-Efforts-Lummi-Nation-Published-3-26-21.pdf \(wacita.org\)](#)
- [National Indian Child Welfare Association -Guide-to-ICWA-Compliance.pdf](#)
- Department Policy: [2.40.60 Qualified Expert Witnesses for Indian Child Welfare \(ICW\) Cases | Washington State Department of Children, Youth, and Families](#)
- ICWA Job Aids from California Courts: [ICWA Job Aids - tribal projects \(ca.gov\)](#)
- National Indian Child Welfare Association ICWA Page: [For Families & Service Providers » NICWA](#)
- Native American Rights Fund ICWA Page: [Indian Child Welfare Act \(ICWA\) \(Haaland v. Brackeen\) - Native American Rights Fund \(narf.org\)](#)
- Partnership with Native Americans ICWA Page: [Indian Child Welfare Act \(ICWA\) - PWNA \(nativepartnership.org\)](#)
- Tribal Court Clearinghouse: [Indian Child Welfare Act Resources \(tribal-institute.org\)](#)
- NCJFC [ICWA Courts - NCJFCJ\](#)
- University of Montana: [National Native Children's Trauma Center \(nnctc.org\)](#)
- National Congress of American Indians Resource Library: [Browse Folders | NCAI \(assetbank-server.com\)](#)
- Tribal Leaders Directory: [Tribal Leaders Directory | Indian Affairs \(bia.gov\)](#)



# Questions & Contact Information

Jeffrey Adams, OCLA

[jeffrey.adams@ocla.wa.gov](mailto:jeffrey.adams@ocla.wa.gov)

(360) 485-1563

(564) 200-4381 (mobile)

Sonja Ulrich, DSW, MSW

[Sonjadulrich@outlook.com](mailto:Sonjadulrich@outlook.com)

(360) 556-2965

Nicole Miller, MA, CDE®

[Nicolelmiller6@gmail.com](mailto:Nicolelmiller6@gmail.com)

(360) 790-6263

