Scenario: applying the law to a case.

Six-year-old Stewart’s teacher discovers bruises on his back and contacts the Spokane DCYF office. A CPS Investigator meets with Stewart and requests permission from Law Enforcement to take Stewart to the hospital for an exam. Permission is granted and an x-ray reveals a small fracture in his right ankle. The CPS Investigator determines that Stewart is at imminent risk of physical harm and retains custody of him. In addition, CPS also removes Stewart’s sisters, Laura (age 4) and Emma (age 2) from the care of their parents, Mona and David. Mona’s son from a previous relationship, Alex (age 9), is also removed from the home. Alex’s biological father is a registered member of the Beecher Bay First Nation, a Canadian tribe. All four children are placed into emergency foster care.

When questioned by CPS, David admitted to hitting Stewart and knocking him to the floor when he refused to do his homework. Mona knew David had knocked Stewart down but was afraid to take him to the doctor, fearing all her children might be taken away.

At the initial shelter care hearing the court finds that all four children are at risk of imminent physical harm and rules that the children were appropriately placed into emergency foster care. When asked by the judge about any Tribal affiliation, Mona states she has none. David tells the court his maternal grandmother was an enrolled with the Ketchikan Indian Community, but he is not sure if he is enrolled.

After the shelter care hearing Mona and David tell the CPS Investigator they want to have their children placed with a family friend, Ellen, who is a member of the Coeur D’Alene tribe and lives in Pullman, Washington. Ellen has an established relationship with all four children.

Mona and David request a contested Fact Finding hearing. At that hearing the state court finds the children dependent and orders services for Mona and David which include; parenting class for both parents, an 18-week anger management program for David, and a protective parenting class for Mona. The Ketchikan Indian Community does not file documents to legally intervene in the dependency case because they are still investigating whether David is enrolled or eligible to enroll. However, they do ask to be kept informed as the case progresses. After the dependency is established, the children remained in the foster home where they were placed upon removal from their parents’ care.

A Volunteer Advocate is assigned after the Fact Finding hearing. The volunteer reviews case discovery and then speaks with the CFWS Caseworker. The Caseworker tells the volunteer they have never heard of Ellen, and as a result, she has not been contacted. The CFWS Caseworker also states that the parents are not appropriately engaging in their court-ordered services.

The Volunteer Advocate then speaks with Mona and David and asks David if he has been able to confirm his enrollment with the Ketchikan Indian Community. He says he has gotten a copy of his enrollment card, but is having trouble reaching the CFWS Caseworker to give it to them. Ketchikan Indian Community has confirmed his three children are eligible to enroll as well. Mona then tells the Volunteer Advocate that she spoke with her mother the day before and discovered that her mother is an enrolled member of the Coeur d’Alene tribe based in Idaho. Mona does not know if she is eligible to enroll.

David says he is uncomfortable with the teaching style of their current parenting class because it is in conflict with his tribal beliefs, he has asked to take a different class. His anger management class starts next week.

 Each of the children, when spoken with separately, express to the Volunteer Advocate their desire to return home to their parents. Alex, Stewart, and Laura all tell the volunteer that if they can’t go home right now, they want to go stay with their Auntie Ellen.

**Questions**:

1. Does the state court have “reason to know” under *In re: ZJG* that ICWA applies to any of the children? Why or why not?
2. Which, if any, of the children are Indian children? Which, if any, of the children are Indian children under ICWA? Which one(s)? How do you know?
3. Does the active efforts standard apply to the ongoing case? If so, is this standard being met by the state?
4. Did the state follow the hierarchy under ICWA regarding placement of the children? Why or why not?
5. Is the Volunteer Advocate responsible under ICWA, a GALR, or other requirement, to keep the Ketchikan Indian Community informed as they have requested? If so, how can the Volunteer Advocate meet that responsibility?