

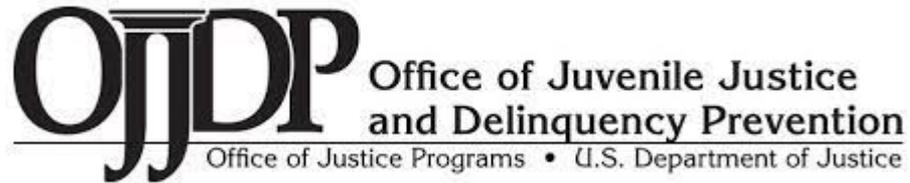


# Oregon Through the Eyes of a Child Conference

## JUDICIAL LEADERSHIP AND MODEL COURT TEAMS

August 9, 2021

National Council of Juvenile and Family Court Judges



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Points of view or opinions expressed in this presentation are those of the presenter(s) and do not necessarily represent the official position or policies of OJJDP or the U.S. Department of Justice.

# Overview

## Our Purpose:

- ◆ Review key federal legislation time line
- ◆ Provide the basics on how specific federal laws encourage collaboration
- ◆ Discuss ways judges should encourage collaboration while enforcing the law



# Key Federal Legislation Timeline (1)

- ◆ **1974** – Original CAPTA
- ◆ **1978** – ICWA
- ◆ **1978** – CAPTA Amended
- ◆ **1980** – Adoption Assistance and Child Welfare Act
- ◆ **1984** – '88, '92 – CAPTA Amended
- ◆ **1993** – Omnibus Budget Reconciliation Act (Court Improvement Program)
- ◆ **1993** – Family Preservation and Family Support Services Program

*NCJFCJ RESOURCE GUIDELINES, 1995*

## Key Federal Legislation Timeline (2)

- ◆ **1994** – MEPA
- ◆ **1996** – MEPA and CAPTA Amended
- ◆ **1997** – ASFA
- ◆ **1999** – CHAFEE Foster Care Independence Act
- ◆ **2000** – Child Abuse Prevention and Enforcement Act
- ◆ **2000** – Strengthening Abuse and Neglect Courts Act

*NCJFCJ ADOPTION AND PERMANENCY GUIDELINES, 2000*

## Key Federal Legislation Timeline (3)

- ◆ **2001** – Promoting Safe and Stable Families Amendments
- ◆ **2001** – No Child Left Behind Act **and** McKinney-Vento Homeless Education Assistance Improvements Act
- ◆ **2003** – Keeping Children Safe Act
- ◆ **2003** – Adoption Promotion Act
- ◆ **2004** – IDEA

## Key Federal Legislation Timeline (4)

- ◆ **2005** – Fair Access to Foster Care Act
- ◆ **2005** – Deficit Reduction Act
- ◆ **2006** – Safe and Timely Interstate Placement of Foster Children Act
- ◆ **2006** – Child and Family Services Improvement Act
- ◆ **2006** – Adam Walsh Child Protection and Safety Act

## Key Federal Legislation Timeline (5)

- ◆ **2008** - Fostering Connections to Success and Increasing Adoptions Act
- ◆ **2010** - CAPTA Reauthorization
- ◆ **2014** - Preventing Sex Trafficking and Strengthening Families Act
- ◆ **2018** - Families First Prevention Services Act



# Key Child Welfare Laws

**INDIAN CHILD WELFARE ACT (ICWA)  
ADOPTION AND SAFE FAMILIES ACT  
(ASFA)**

National Council of Juvenile and Family  
Court Judges

# Indian Child Welfare Act (1978) P.L. 95-608

## Goals:

- ◆ To protect the best interests and stability of Indian children and families.
- ◆ To establish minimum Federal standards for the removal of Indian children from their homes and for the placement of Indian children in homes that reflect the values of Indian culture.

**P.L. 95-608, 25 U.S.C. § 1901**

# Emergency Removal

- ◆ ICWA allows emergency removal of an Indian child who is temporarily off the reservation in order to prevent imminent physical damage or harm.
- ◆ The Indian child must be returned home as soon as the threat of imminent physical harm has passed or the tribal court asserts jurisdiction, whichever is earlier.
- ◆ If the child is not returned or case transferred, the State Court “*shall expeditiously initiate a child custody proceeding subject to the [ICWA]*”

**U.S.C. 25 § 1922; BIA Guidelines**

## Jurisdiction (Cont'd)

A tribe has jurisdiction over child custody proceedings involving an Indian child:

- ◆ Where the child is domiciled or resides on an Indian reservation (**25 U.S.C. 1911(a)**)
- ◆ When the child is a ward of the tribal court, regardless of the child's domicile or residence (**25 U.S.C. 1911(a)**)
- ◆ Concurrent jurisdiction where the child is domiciled or resides off an Indian reservation and is not a ward of the tribe's court (**25 U.S.C. 1911(b)**)

# ICWA Requirements

- ◆ Inquiry and Notice
- ◆ Transfer of Proceedings
- ◆ Intervention
- ◆ Right to Counsel
- ◆ Active efforts
- ◆ Evidentiary burdens
- ◆ Qualified expert witness
- ◆ Placement preferences



# ICWA Requirements Inquiry

## ◆ Who?

social worker, probation officer, petitioner and the court have affirmative and ongoing duty to inquire about Indian status

## ◆ When?

at removal or as soon as possible thereafter

# ICWA Requirements Notice Timelines

## ◆ General Rule

- The tribe and parents/custodians must receive notice 10 days prior to a hearing and may request an additional 20 days **25 U.S.C. 1912(a)**

## ◆ Exceptions

- The Shelter Care Hearing
- Jurisdiction in delinquency hearings where conflicts with a speedy trial
- Disposition in delinquency where good cause to deny, including moving a child to less restrictive setting

# ICWA Requirements

## Transfer of Proceedings

A State Court shall transfer to tribal court a foster care placement or TPR proceeding involving an Indian child not domiciled or residing within the reservation of the child's tribe when:

- ◆ Requested to do so
- ◆ There is no good cause to the contrary
- ◆ Neither parent objects
- ◆ The tribal court does not decline jurisdiction

**25 U.S.C. 1911**

## ICWA Requirements Right to Intervene

In any state court proceeding for the foster care placement or TPR of an Indian Child, the child's Indian custodian and tribe have:

- ♦ The right to intervene
- ♦ At any point in the proceeding

**25 U.S.C. 1911(c)**

# ICWA Requirements

## Heightened Burden of Proof

- ◆ **No foster care placement in the absence of:**
  - clear and convincing evidence (including testimony of at least one qualified expert witness)
  - that continued custody is likely to result in serious emotional or physical damage to the child
- ◆ **No TPR in the absence of evidence:**
  - beyond a reasonable doubt (including testimony of at least one qualified expert witness)
  - that continued custody is likely to result in serious emotional or physical damage to the child

# Adoption and Safe Families Act (ASFA) (1997) P.L. 105-89

## ASFA Goals

- ◆ To promote permanency for children in foster care.
- ◆ To ensure safety for abused and neglected children.
- ◆ To accelerate permanent placements of children.
- ◆ To increase accountability of the child welfare system.

# AFSA Goals (1)



- ◆ Safety and well-being of children are paramount concerns
- ◆ Foster care is temporary
  - **permanency timelines**
- ◆ Termination filings in certain conditions

## AFSA Goals (2)

- ◆ No reasonable efforts regarding removal or reunification in certain circumstance
- ◆ New reasonable efforts expectation when reunification is no longer the goal

**P.L. 105-89, 45 C.F.R.**



## AFSA Goals (3)



- ◆ Foster parents' rights to notice and be heard at review
- ◆ Focus on the adoptability of ALL children
- ◆ Contrary to welfare finding in first Court ruling

**45 C.F.R. § 1356.21(c)**

# AFSA—Provisions Affecting Judicial Proceedings (1)

- ◆ Reasonable efforts
- ◆ Contrary to welfare determination
- ◆ Foster care placement; limit on court role
- ◆ Permanency hearing deadline
- ◆ Permanency plan set at hearing
- ◆ Permissible plans

## AFSA—Provisions Affecting Judicial Proceedings (2)

- ◆ Reasonable efforts to finalize plan
- ◆ TPR required; deadline for filing TPR w/in 60 days of felony determination
- ◆ TPR w/in 60 days of abandoned infant determination
- ◆ Exceptions to TPR requirement
- ◆ Adoptive family recruitment at TPR filing

# AFSA Permissible Plans

## Permissible plans or goals under ASFA

- ◆ Reunification
- ◆ Adoption
- ◆ Permanent Legal Guardianship
- ◆ Placement with a Fit and Willing Relative
- ◆ Another Planned Permanent Living Arrangement

**45 C.F.R. § 1355.20**

# QUESTIONS?





# Judicial Leadership

**NCJFCJ**  
*est. 1937*  
WWW.NCJFCJ.ORG



## ROLE OF THE JUDGE & REASONABLE EFFORTS

National Council of Juvenile and Family Court  
Judges

What do judges  
have to do with it?

## The judge models civility, respect, dignity and requires others to do the same—engage!

1. ***Emergency Room Response:*** Act with a sense of urgency for the child & parents—as if this family is your own!
2. ***Front load services:*** Pragmatic, timely, effective response to abuse & neglect
3. ***Affirmation with accountability*** motivates parental improvement/resolution of permanency
4. ***Alternative Dispute Resolution:*** Pre-Hearing Conference, Family Group Conference, Mediation
5. ***Parental engagement from day one***

# What can be done to improve these outcomes?

- ◆ Inquiry into the needs of children and parents by the judge shows social workers, attorneys, providers, teachers, and others that these needs are important and can help all stakeholders respond better to those needs
- ◆ Collaboration among agencies, child welfare, schools, and courts can positively impact the chances of success for these children and parents



# The Role of the Dependency Court Judge

Doesn't the Judge just decide the case?

- ◆ Not in juvenile court!
- ◆ The juvenile court judge must do much more than decide cases.
- ◆ The juvenile court is the original problem solving court. The role of the juvenile court judge involves leadership functions.
  - The judge **must** connect with system stakeholders and the community to address the needs of the children and families before the court.

# Responsibilities of the Dependency Court Judge

- ◆ Parens patriae surrogate
- ◆ Gatekeeper
- ◆ Jurist of law and fact
- ◆ Administrator of due process
- ◆ Inquiring magistrate of well-being, safety and plan for children in care
- ◆ Applier of therapeutic/restorative justice principles

## Reasons for Judicial Oversight

- ◆ Court/agency involvement is simultaneous
- ◆ Multiple person/agency involvement creates potential for delay, error and conflict
- ◆ Court sets and adjusts direction and plan
- ◆ Court approves placement, visits and services
- ◆ Court enforces participants' involvement
- ◆ Court ensures all steps that can be taken are being taken

# Judicial Oversight—The Big Picture



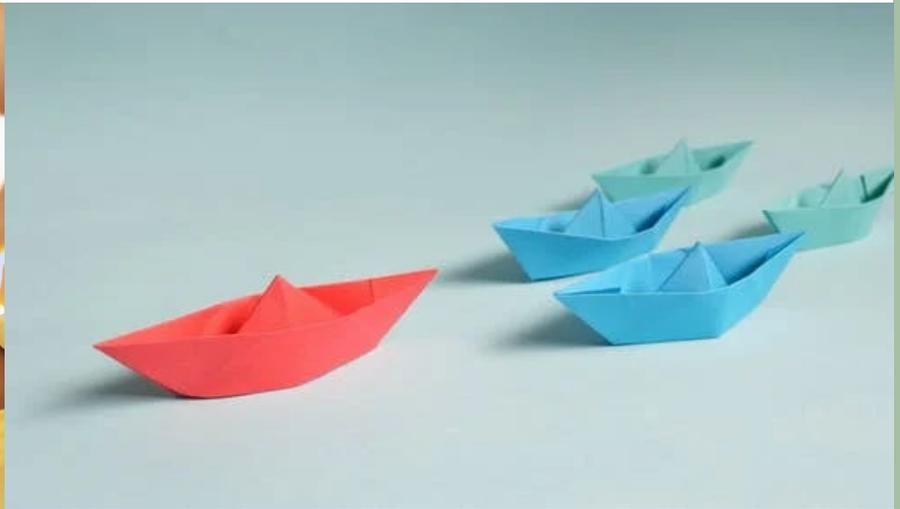
*A Home Would be  
Heaven – Silvia,  
Age 13*

- ◆ To ensure that every child that should be in care is in care, but not a single child more
- ◆ To ensure that every child that is in care is in a safe, nurturing placement that is supportive of the permanency plan

## Summary—Judicial Responsibility in Dependency Cases

- ◆ Court must hold system accountable
- ◆ Judges can be active in policy, rules and procedures development
- ◆ Judges must act as convener and advocate to ensure accountability
- ◆ Judges must hold participants accountable—and themselves
- ◆ Judges should exercise leadership both on and off-the- bench
- ◆ Judges must exercise strong judicial oversight of dependency cases

# The Importance of Reasonable Efforts



# Reasonable Efforts Generally (1)

## 1) Maintain the family – Contrary to the Welfare Finding

- ◆ Finding must be in the first order of removal and **if not** made the child is not eligible for Title IV-E foster care payments for the duration of that stay in foster care.

**45 C.F.R. §1356.21(b)**

## Reasonable Efforts Generally (2)

### 2) Effect the safe reunification of the child and family- (Reasonable Efforts to Prevent Removal)

- ◆ RE to prevent or eliminate the need for removal must be made w/in 60 days of removal (recommended at first hearing where removal can be challenged) and if not made the child is not eligible for Title IV-E foster care payments for the duration of that stay in foster care.

**45 C.F.R. §1356.21(b)**

# Reasonable Efforts Generally (3a)

## 3) Finalize a Permanency plan

- ◆ Findings made w/in 12 months of removal and if not made the child becomes ineligible for IV-E from the end of the 12<sup>th</sup> month following the date the child is considered to have entered care or the end of the most recent judicial determination to finalize permanency was made and **remains ineligible until such a determination is made.**

**45 C.F.R. §1356.21(b)**

## Reasonable Efforts Generally (3b)

- ◆ If you take siblings out of a home, **reasonable efforts must be made to keep them together** unless you find there is a **significant safety issue** that prevents common placement.
- ◆ Notice to all adult relatives of the child's removal.
- ◆ If they can't be placed together, agency must facilitate sibling visits unless it is not safe.

Fostering Connections Act of 2008  
Preventing Sex Trafficking and Strengthening Families Act of 2014

# Active Efforts Generally (1)

- ◆ Requirement set by the Indian Child Welfare Act of 1978, which established minimum Federal standards for State child custody proceedings involving an “Indian Child”
- ◆ Requires more rigorous efforts to promote reunification

**25 U.S.C. § 1901 et**

**seg.**

## Active Efforts Generally (2)

- ◆ Affirmative, active, thorough and timely efforts to maintain or reunite an Indian child with his/her family...
- ◆ 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.
- ◆ Must be tailored to the facts and circumstances of the case

**25 C.F.R. § 23.2**

# Break

# Legal Threshold for Removal

- ◆ **BEWARE** of '*rubber stamping*' removal and placement decisions [Beware of rubber stamping anything!]
- ◆ Hold an additional hearing if necessary
- ◆ Sufficient facts to support the allegations or conclusions made
- ◆ Consideration of other plausible explanations for parental actions or behavior

# Can the child be returned home today?

- ◆ That question is linked with the Safety Threat as well as the “Minimally Adequate” Standard
- ◆ Child safety depends on the:
  - Threat of danger
  - Child’s vulnerability
  - Parents’ protective capacity



# In-Home Safety Plan

- ◆ Where there are safety threats, vulnerability and inadequate protective capacity...
  - What will protect the child?
  - When threats develop will such a plan control the safety threats?
  - What services or action steps are required to control the threats?

# The Threshold for Removal

- ◆ Is a Constitutional Standard
- ◆ Does not change based on external factors
- ◆ Does not change over the life of the case
- ◆ Is based on the fact and the law



## Two Tiers of Reasonable Effort

- ◆ **Tier One Reasonable Efforts**

Reasonable efforts made in each individual case

- ◆ **Tier Two Reasonable Efforts**

Reasonable efforts to track needs and to develop services to meet the needs

# Tier One Reasonable Efforts (1)

- ◆ Assess the family situation
- ◆ Determine if any available services will work
- ◆ Consider alternative ways other than removal
- ◆ Inform family about available services
- ◆ Offer services most likely to work
- ◆ Give family opportunity to request other services

Making Reasonable Efforts: A Permanent Home for Every Child

## Tier One Reasonable Efforts (2)

- ◆ Provide a means for review of agency's failure to provide services family believes will work
- ◆ Develop an appropriate case plan
- ◆ Visitation
- ◆ Permanency hearings

Making Reasonable Efforts: A Permanent Home for Every Child

# Tier Two Reasonable Efforts (1)

- ◆ Assess need
- ◆ Comprehensive plan for prevention and reunification
- ◆ Provide all services
- ◆ Structure service delivery to keep families together

Making Reasonable Efforts: A Permanent Home for Every Child

## Tier Two Reasonable Efforts (2)

- ◆ Conduct training
- ◆ Establish appropriate criteria for services
- ◆ Develop written guidelines, procedures and protocols

Making Reasonable Efforts: A Permanent Home for Every Child

# Key Elements of a Solution Seeking Court



- ◆ Intense Judicial Oversight
- ◆ Front-Load Reasonable Efforts Services
- ◆ Intense Case Management

# Goals for Children

- ◆ Achieve a safe, secure, permanent home in a timely fashion according to ASFA guidelines: 12 Month PPH or sooner
- ◆ Best Interest & Safety: Secure, consistent, nurturing, loving caregiver to meet this child's needs.
- ◆ Medical, dental, vision, hearing, physical, educational and developmental needs met through evaluation and appropriate services.
- ◆ Stop Foster Care Drift:
  - Permanency from Day One
  - Concurrent Plan—Reunification & Adoption

## Goals for Parents

- ◆ *90% abuse/neglect cases: substance use and mental health*
- ◆ Active participation & responsibility
- ◆ Adequate parenting skills, demonstrate the ability to provide a safe, healthy family environment for their children = reunification
- ◆ Due process & fair hearings

## Reasonable Efforts

- ◆ Do not accept a recommendation for a “parenting class”. Certificate based on attendance or competency?
- ◆ Do not accept “supervised visitation”
- ◆ Do not accept “visitation once (or twice) a week for an hour or two”
- ◆ Do not accept family time at McDonald’s, the HHS office, the mall, etc., etc. . . .

## Require Reasonable Efforts

- ◆ Meaningful and ample family time in a context rich environment
- ◆ Provide for family time in a natural setting, doing normal family things: feed, bathe, play, rock, put down for nap, hold when awaking
- ◆ Parent training by an expert if oversight or training is appropriate
- ◆ NB: Each family time over 1x per week triples the chances of achieving permanency (Brenda Jones Harden, Ph.D.)

# Outcomes

- ◆ Good information=good judicial decisions
- ◆ Timely services=front loading at the beginning
- ◆ More early admissions/Cont. Anticipation of Dismissal because parents are self-correcting issues
- ◆ Disposition Hearing with Adjudication—parents already doing the rehabilitative case plan
- ◆ Children & parents' needs met: reunification safely & sooner
- ◆ Permanency from Day One—avoid prolonged foster care & achieve timely permanency

# QUESTIONS?



# The Importance of Shared Vision (1)

Generates a clear organizational and system purpose and promotes the necessary changes that need to occur to achieve desired future outcomes.

It is a response to the question, “What do we want to create together?”

## The Importance of Shared Vision (2)

A shared vision helps to create a sense of commonality between system partners – providing coherence to varied activities and promoting understanding of different roles and responsibilities

- ◆ People who truly share a vision are connected and bound together by a common aspiration

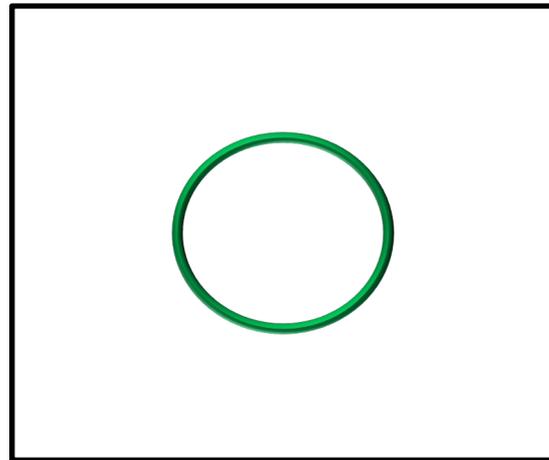
## A Shared Vision...

- ◆ Focuses on a mutual purpose
- ◆ Is uplifting and motivational
- ◆ Encourages experimentation and innovation
- ◆ Fosters long-term commitment to change goals

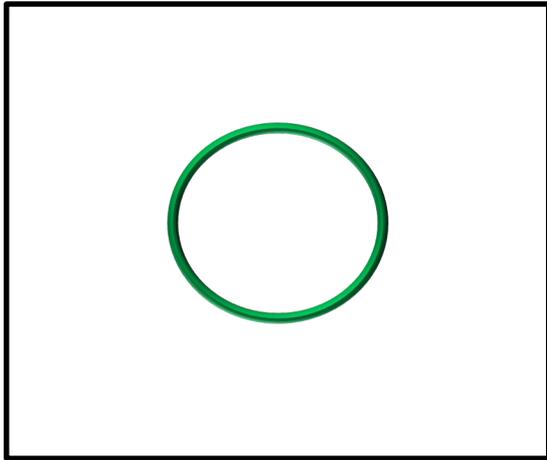
## A Visual...



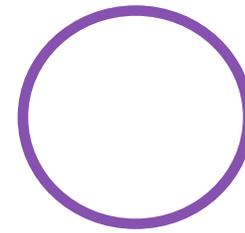
This is you – the Court.



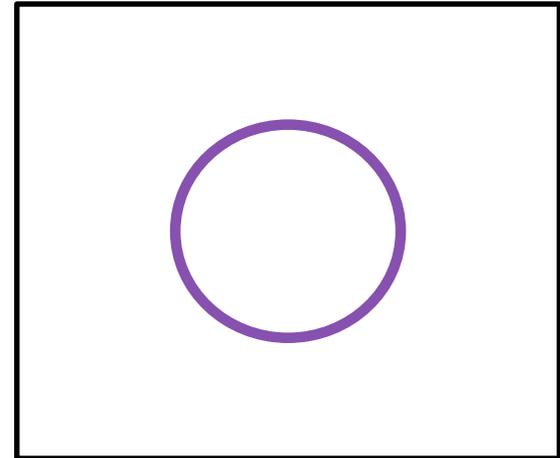
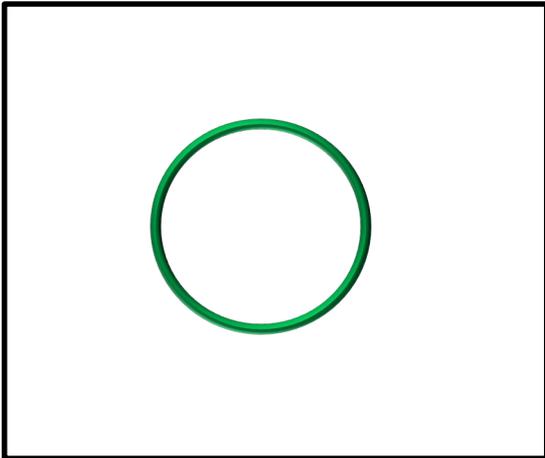
This is you and the things you know.



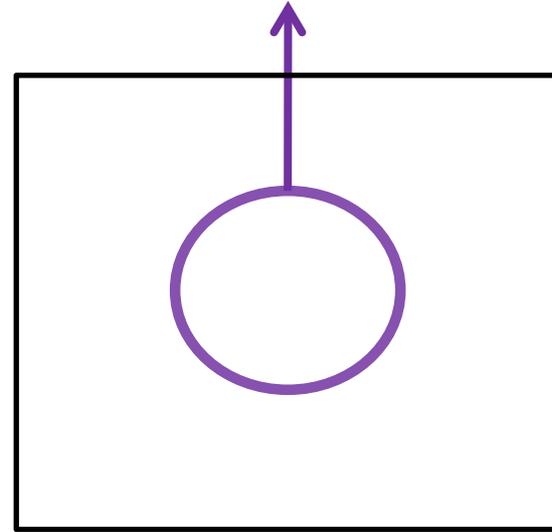
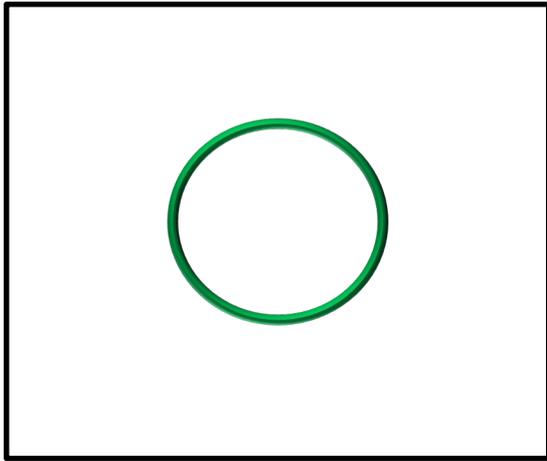
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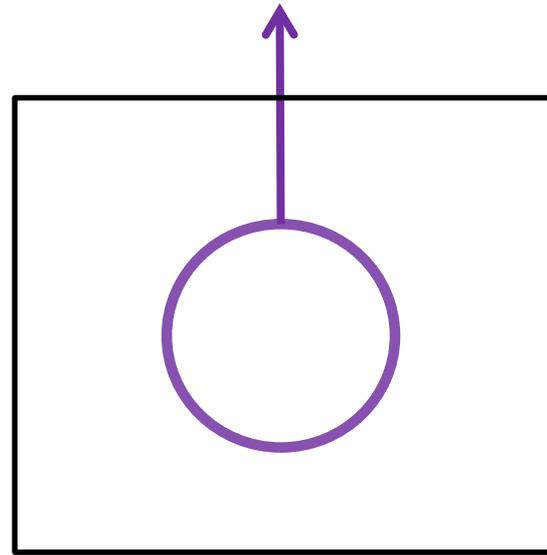
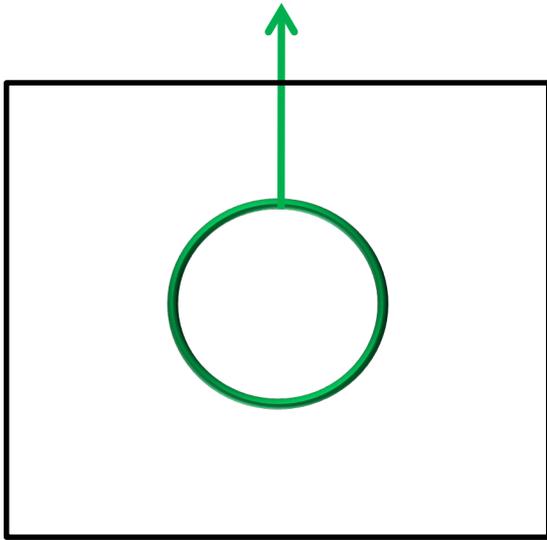
This is you system partner.



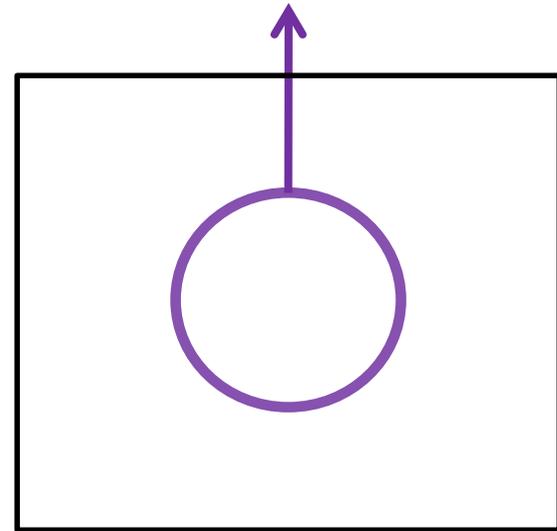
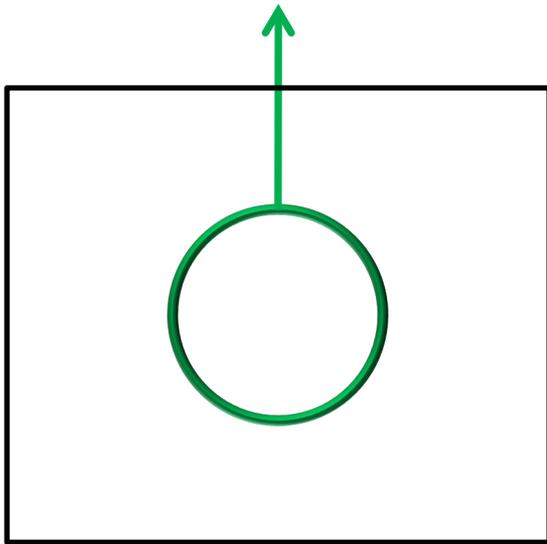
This is your system partner and the things your system partner knows.



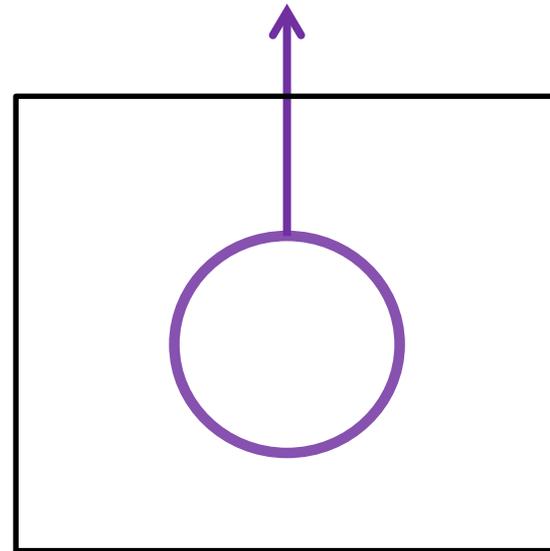
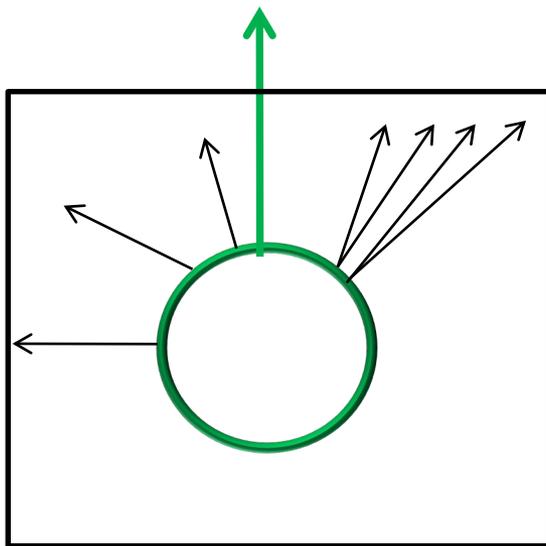
This is your partner's main goal.



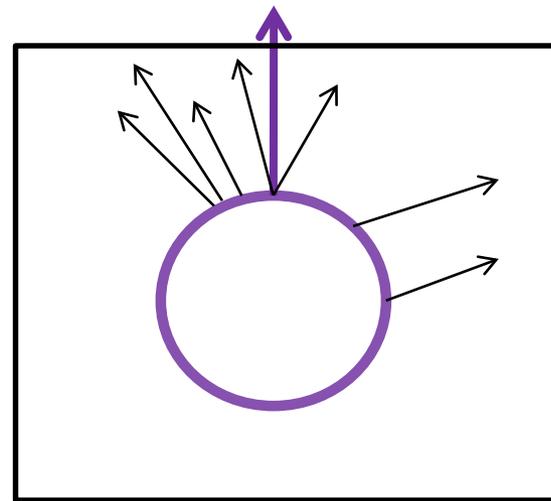
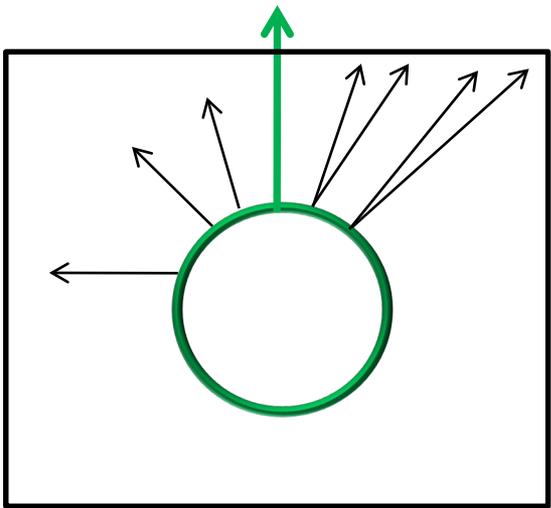
And this is your main goal.



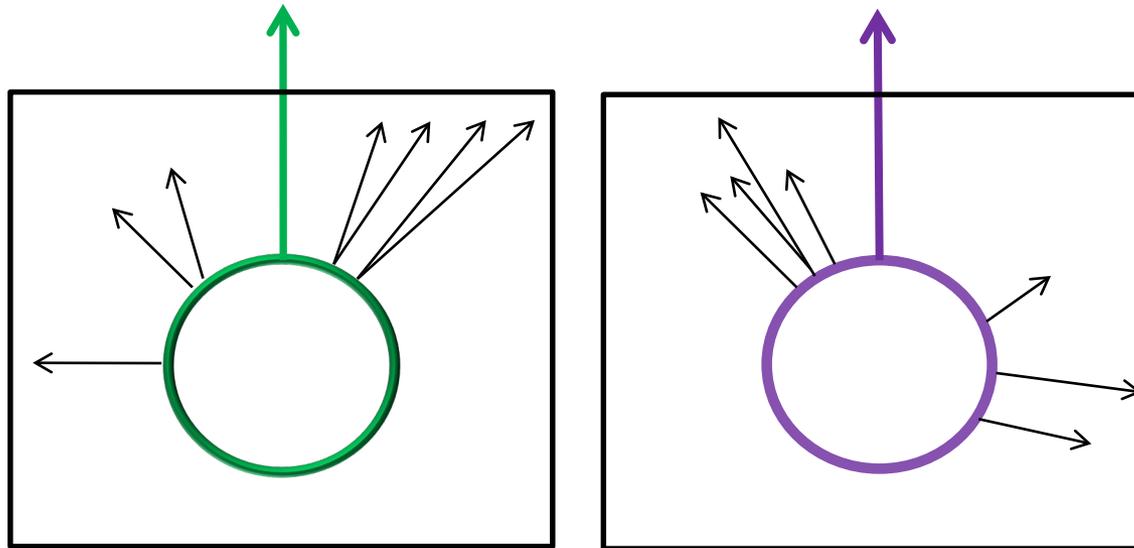
Your goals seem to be aligned...



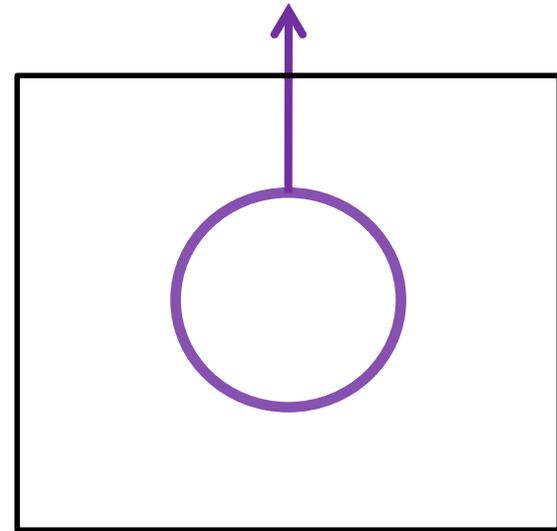
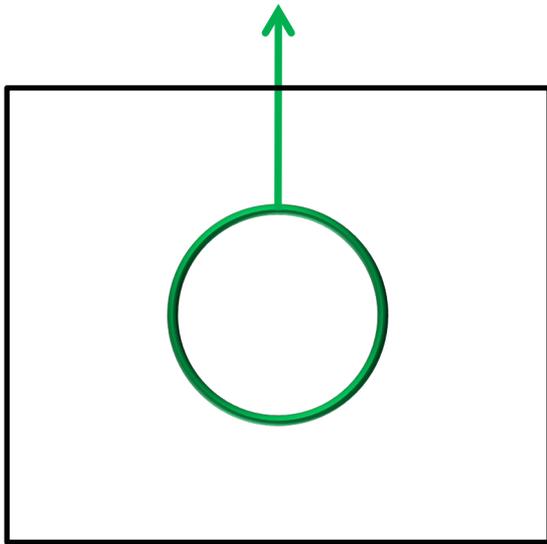
But you actually have a lot of related goals  
and objectives ...



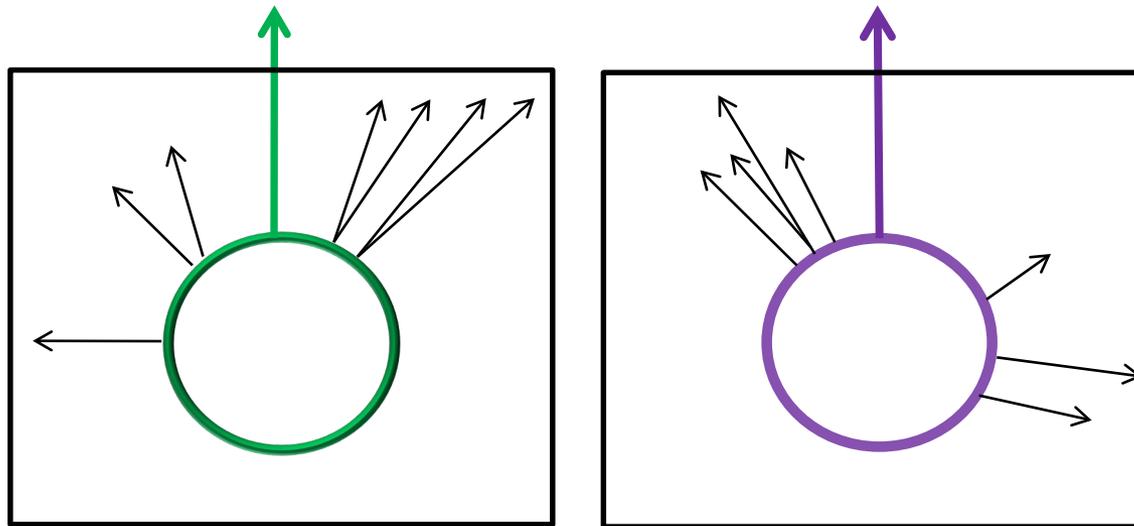
*And so does your partner ...*



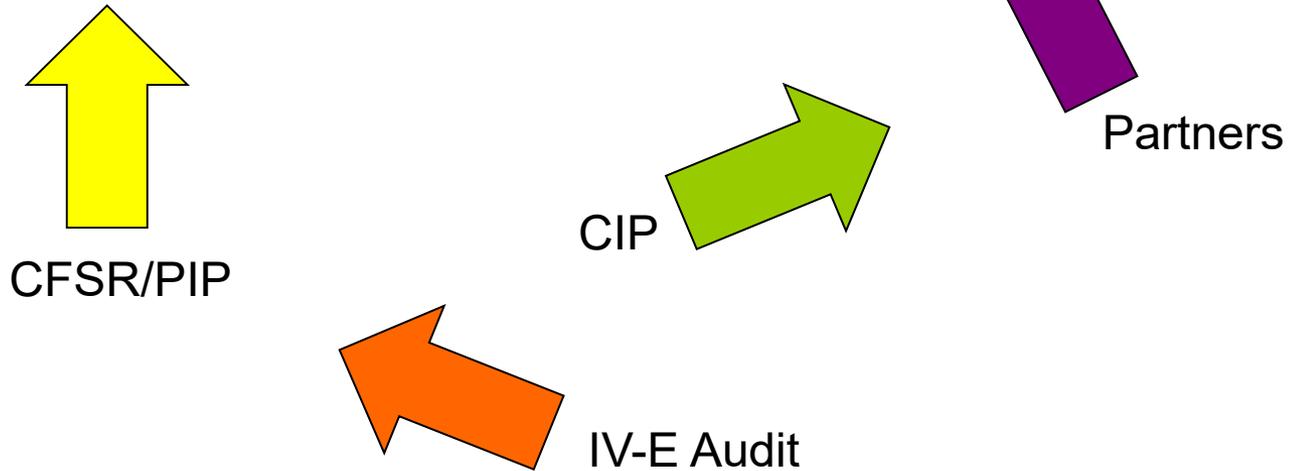
Your goals give you an orientation, a direction, a plan ...  
They give your system partner a direction and plan too ...



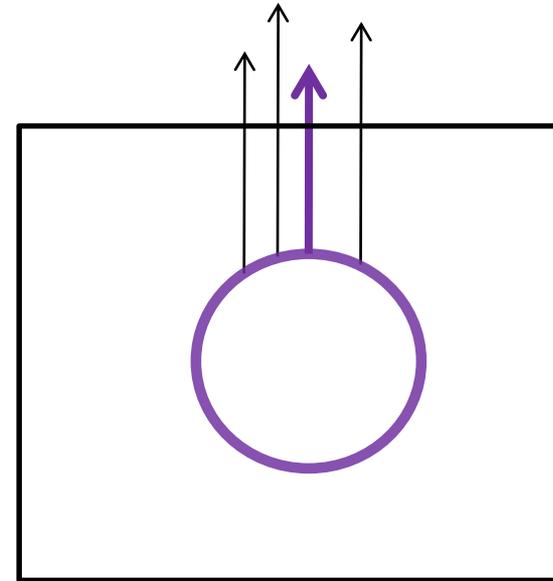
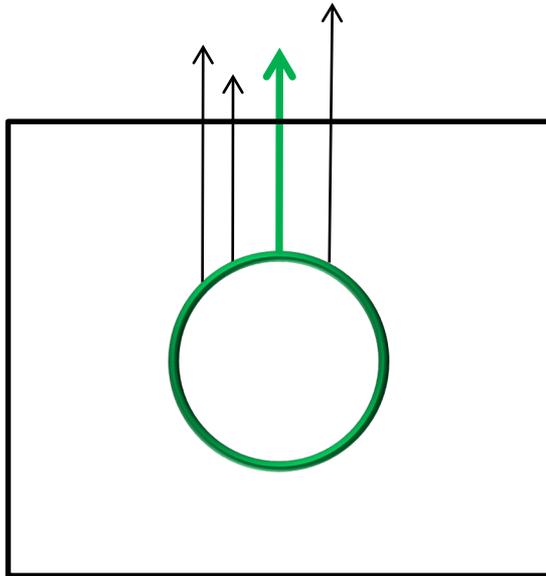
While your main goals may be perfectly aligned...



You aren't exactly on the same page ... While there is commonality and overlap, there are also differences.



You and your system partner may also have a number of competing priorities and operating strategic plans ... taking you in different directions.



The more closely aligned you and your system partner are on key goals, the more coherent, coordinated, and powerful your efforts will be.

## Why Align Goals? (1)

While some differences in goals and objectives are appropriate for different organizations with different organizational frameworks, staff and mandates, there are clear advantages to aligning organizational change goals with your system partners.

## Why Align Goals? (2)

- ◆ Facilitates movement forward while reducing the likelihood that system partners will work at cross-purposes
  - Reduces chances that systems will pull against each other

## Why Align Goals? (3)

- ◆ Affords the opportunity for differences to retreat into the background and for commonalities to become salient
  - Differences and conflict among institutions, agencies, and professions that may differ in philosophy, positional power, and resources can be overcome



# Ways to Align Your Goals

- ◆ Expand your scope so that you are more aware of partners' goals and motivations
- ◆ Bring system partners to the table to participate in your strategic planning efforts
- ◆ Involve system partners in specific initiatives that are aligned with each other's vision and goals

# Questions?

