

Memorandum of Understanding
for Collaborative-Coordinated Implementation of the
Indian Child Welfare Act
with the Skull Valley Band of Goshute Indians
and
the Utah Division of Child and Family Services

This Memorandum of Understanding (hereinafter referred to as the “MOU”) is entered into by and between the Utah Division of Child and Family Services (hereinafter referred to as “DCFS”) and the Skull Valley Goshute Indians (hereinafter referred to as the “Tribe”).

PHILOSOPHY

The federal government has a trust responsibility and obligation towards Indian tribes, which has been described as a moral obligation of the highest responsibility. As a result of this responsibility, the federal government has passed the Indian Child Welfare Act (hereinafter referred to “ICWA”) of 1978 (25 U.S.C. §1901) to protect the resource most valuable to Indian tribes; its children. “Recognizing the special relationship between the United States and the Indian tribes and their members and the federal responsibility to Indian people, Congress finds...that through statutes, treaties, and the general course of dealing with Indian tribes, Congress has assumed the responsibility for the protection and preservation of Indian tribes and their resources [and] that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe.”

The State of Utah recognizes that the federal government has a trust responsibility to Indian tribes, and as a result, desires to work together with the Tribe in a government-to-government relationship to jointly carry out the mandates of ICWA. ICWA provides that states and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian Tribes.

PURPOSE

The purpose of this MOU is to set forth the terms, definitions, and conditions regarding the duties and responsibilities of DCFS and the Tribe to provide “best practice” techniques along with child welfare services; which include child protection, case management, foster care licensing, ICWA, and administrative support to abused and neglected, enrolled, or eligible for enrollment Goshute Indian children.

Skull Valley Band of Goshute Indians

The Skull Valley Band of Goshute Indians is a federally recognized Indian Tribe, located in the west desert of Tooele County. The Band has headquarters in Salt Lake City, Utah, and membership of 134 enrolled Tribal members. Approximately seven families live on the reservation and the balance of the Tribal members live in the outlying cities or out of state.

GENERAL PROVISIONS

- A. To carry out the provisions of this MOU in a spirit of cooperation and mutual respect to meet our common goals of preserving families and protecting children by nourishing the cultural heritage which sustains both.

- B. To recognize the purpose and intent of the Indian Child Welfare Act (ICWA) of 1978 (U.S.C. 1901-1952) is to protect the best interests of Indian children by preserving tribal integrity and reducing the removal of children from Indian homes and environments.

- C. That both the Tribe and DCFS seek to reduce cultural bias in evaluating home and family conditions and making decisions affecting Indian children and families.

- D. DCFS shall notify the Skull Valley Goshute Indian ICWA office, by certified mail, return receipt, and by phone or fax, as soon as there is any reason to believe that the child may be enrolled or eligible for enrollment as a member of the Tribe. Such notice will be for the purpose of facilitating communications in social service interventions in ICWA cases to:
 - 1. Facilitate communication with the extended family.
 - 2. Prevent unnecessary removal of Indian children from their caregivers.
 - 3. Secure emergency placement with an Indian relative or an Indian foster home whenever possible.
 - 4. Assist in compliance with the notification requirement of the ICWA.
 - 5. Assist in securing reliable identification of Indian children.
 - 6. Assist in the placement of Indian children in appropriate homes.

- E. All questions regarding membership or eligibility for membership in the Tribe shall be decided by the Tribe, and such decisions shall be conclusive and irrefutable. If DCFS has questions concerning Tribal membership of a particular individual, DCFS shall communicate with the Tribe’s child welfare office to resolve the questions:

ICWA Coordinator
2480 South Main Street, #210
Salt Lake City, Utah 84115
801/466-9407

WHEREFORE, IT IS AGREED:

Identification Of Indian Children And Tribal Affiliation

- A. DCFS shall make diligent efforts to identify every child who is subject to the ICWA.

- B. DCFS intake workers and case managers shall inquire whether the child/parents are American Indian at **ALL** stages of the case.
 - 1. This will facilitate the proper management of ICWA cases as soon as there is any reason to believe that the child may be enrolled or eligible for enrollment as a member of the Tribe for involvement in the permanency planning process.

 - 2. It will eliminate the sudden “surprise discovery” that there is an Indian child involved.

- C. If the child's parents are unavailable or unable to provide a reliable answer regarding the Indian heritage of their child, the DCFS caseworker shall use the following to determine the child's Indian heritage:
1. A thorough review of all documentation in the file, including contact with the previous caseworker.
 2. Consultation with relatives/collaterals providing information that suggests the child/parent may be American Indian.
 3. Examination of any other information bearing on the determination of the child's Indian heritage, such as communication from other sources including Indian tribes and organizations.
 4. If the caseworker determines a child may be Indian, DCFS will immediately notify the Attorney General pursuant to the above notice requirement. The Tribe will provide written verification, via certified mail and fax that this case involves an "Indian child"; a child who is enrolled or eligible to be enrolled under ICWA.
- D. The Tribal worker will:
1. Serve as a liaison for receiving and accepting all ICWA inquiries from DCFS.
 2. Independently or collaboratively conduct research on eligibility for membership in the Tribe to determine whether the case shall be conducted in compliance with ICWA.
 3. Provide written response inquiries, within appropriate timeframes, as to the intent of the Tribe.
 - a. Within five days, provide written verification of enrollment or eligibility for enrollment.
 - b. Within ten days, provide written notice of intent to intervene.
 - c. Within 30 days, provide notice of intent to transfer the case to Tribal court.
 - d. If any of the above time periods pass without any action from the Tribe, the DCFS caseworker should move forward, realizing that the Tribe has not waived any rights and may assert their rights under ICWA later. The DCFS caseworker will continue to actively work with the Tribe.
 4. Serve as a liaison for the Tribe with follow-up and monitoring of ICWA cases that may result in foster care or adoption through the Tribe or State.

Indian Parents And Tribes Have The Right To Notice And To Intervene

Tribal Rights and DCFS Responsibilities

Formal notice of custody proceedings is required by Section 1912 (a) of the ICWA.

- A. Tribal rights:
1. ICWA grants the Tribe the right to intervene in any child custody proceedings under ICWA (i.e., foster care placements, termination of parental rights, pre-adoptive placements, and adoptive placements) at any point in the case.
 2. When the Tribe intervenes they become a party to the proceeding and have the same rights as any other party. For example, the Tribe has the right to counsel, the right to notice, the right to access all documents filed with the court, the right to present its own witnesses or cross examine witnesses, the right to retain counsel if it chooses, and the right to appeal.

3. The Tribe has the right to attend the same meetings as any other party in the proceeding, including any Child and Family Team Meetings, mediations, and discussions.
 4. If the Tribe declines jurisdiction, the Tribe still will have the right to participate as an **interested party** or **to intervene at any point in the proceeding**. The right to intervene extends to voluntary as well as to involuntary proceedings.
- B. DCFS responsibilities
1. If DCFS determines a child may be Indian, the DCFS caseworker will immediately notify the Attorney General pursuant to the above notice requirement. Upon receiving protective custody of an American Indian child residing outside the boundaries of the reservation, the DCFS caseworker shall inform the Attorney General's office. The Attorney General will send a formal notice to the Tribe(s), parents, and Indian custodian by registered mail, returned receipt requested, pursuant to ICWA.
 2. The DCFS caseworker will also give notice (i.e. by phone, e-mail, or fax) to the Tribal representative, at the earliest point possible when a child is removed from the caregiver.
 3. The DCFS caseworker shall work in partnership and continually maintain contact with the Tribal ICWA coordinator or other designated worker.
 4. The DCFS caseworker shall notify the ICWA coordinator of any upcoming discussions, decisions, or meetings, including Child and Family Team Meetings, which the Tribe has a right to attend.

Recognition Of Tribal Licensed And/Or Approval Of Standards For Foster Homes (Utah Code Ann. §62a-2-117)

- A. DCFS shall recognize foster homes within and outside Indian country that are certified, approved, or licensed as meeting the foster home licensing requirements under State law.
- B. DCFS and the Tribe will work cooperatively to make greater efforts to recruit Indian foster care and adoptive homes and develop programs to recruit and license Indian foster care and adoptive homes.
- C. The Tribe agrees to utilize its own foster care licensing or approval standards in determining the suitability of homes to provide foster care and its own procedure for approval of Indian foster homes, and further agrees to provide DCFS, within 30 days after passage by the Tribe, a copy of any changes made to those standards.
- D. Due to the limited number of Indian families available to serve as foster homes, both the Tribe and DCFS agree that a given Indian family may be approved and used by both parties.
- E. The Tribe, utilizing its foster home standards, may approve or license the home to care for children affected by this MOU (as well as other children who are in Tribal custody).
- F. DCFS, utilizing its standards, may approve the home to care for children affected or unaffected by this MOU.

- G. Both the Tribe and DCFS will coordinate the placement of children in such dually approved homes to assure that the individual needs of each child can be met.

Foster Care Payment

DCFS agrees that in the event a Skull Valley Goshute child is placed in protective custody and placed in a foster home licensed or approved by the Tribe, DCFS shall pay the costs of foster care in the same manner and to the same extent as DCFS pays the costs of foster care to state licensed or state approved homes.

Preference Placement

- A. For foster care or pre-adoptive placement, the placement preferences in order of priority are:
1. A member of the Skull Valley Goshute child's extended family;
 2. A foster home licensed and specified by the Tribe;
 3. An Indian foster home licensed or approved by the State; or
 4. An institution for children approved by the Tribe or operated by an Indian organization, which has a program suitable to meet the child's needs.
 5. In the event none of the above placement options are available, the DCFS caseworker will proceed with locating a placement within the same procedures and criteria of any non-ICWA case.
- B. For adoption placements:
1. A member of the Skull Valley Goshute child's extended family;
 2. Other members of the Tribe; or
 3. Other Indian families.
 4. In the event none of the above placement options are available, the caseworker will proceed with locating a placement within the same procedures and criteria of any non-ICWA case.
- C. DCFS caseworkers shall give preference to the ICWA foster and pre-adoptive placements, unless the Indian child's Tribe has established a different order of placement. If there is a different placement preference, the Tribe will notify the DCFS caseworker.
1. Skull Valley Goshute Indian children accepted for foster care placement shall be placed into the least restrictive setting appropriate to his or her special needs, which most approximates his or her home.
 2. In so far as possible, DCFS shall adhere to the prevailing Skull Valley Goshute social and cultural standards in the placement of a Goshute Indian child.
 3. DCFS shall consult with the Skull Valley Goshute ICWA coordinator regarding all questions that relate to the social and cultural standards.
 4. In any proceeding in which the State is unable to comply with ICWA placement preference pursuant to 25 U.S.C. §1915, the State shall prepare a report documenting its efforts to comply with the order of preference and shall send it to the Skull Valley Goshute ICWA contact person.
- D. When DCFS acquires custody in an involuntary proceeding of a Skull Valley Indian child or a child believed to be an Indian, or where a new foster care placement selection for such a child already in DCFS custody is necessary, the DCFS caseworker and Attorney General shall contact the Tribal representative to discuss the child's situation, including

custody status, reason for court action, and all pertinent information regarding the child's need for care. The Tribal representative shall provide information to the DCFS caseworker with regard to the availability of potential extended family placements, which is the first placement preference of ICWA. The Tribal representative will also provide the DCFS caseworker with information concerning available Tribal homes, licensed for foster care.

- E. In the event DCFS determines that a placement in a foster home is required, the DCFS caseworker and Tribal representative shall make a joint selection of the most appropriate foster placement for the child. When it is mutually agreed that a Tribal home, licensed for foster care, is capable of meeting the needs of the child and is available, the Tribal representative shall notify DCFS of their decision. DCFS will confirm with the Tribal representative or DCFS that the proposed placement is an approved foster home. If the foster home has decided against placement with them, then the Tribal representative and DCFS shall make a new selection.
- F. If the Tribe and DCFS cannot mutually reach an agreement on a placement decision during a Child and Family Team Meeting, the parties agree to mediate their differences. If mediation is unsuccessful, the judge will make the placement decision.

Active Efforts

- A. DCFS shall undertake active efforts to provide remedial and rehabilitative services to the Indian family subsequent to an investigation and before a decision is made to place the child out of home.
- B. The rehabilitative effort should take into account the prevailing social and cultural conditions and the way of life of the child's Tribe. These requirements are meant to assure that both evaluation of the problem and development of the treatment plan are culturally appropriate.
- C. To reduce the potential for cultural bias when evaluating home and family conditions and making decisions affecting Indian children and families, the DCFS caseworker shall involve the Tribe and Indian organizations at the earliest possible point of intervention.
- D. Services in the community specifically designed for Indian families are to be used where available, including resources of the extended family, the Tribe, urban Indian organizations, Tribal family service programs and individual Indian caregivers (e.g., medicine men or women), and other individual Tribal members who may have developed special skills that can be used to help the child's family succeed.

Determine Jurisdiction

If the child lives or resides on a reservation or is a ward of the Tribal court, the Tribe has jurisdiction.

If the child lives off the reservation, the State has initial jurisdiction; however, the Tribe may transfer the case to the Tribal court.

Terms

Any provisions of this MOU may be altered, varied, modified, or waived only if such alteration, modification, or waiver is: (1) reduced to writing; (2) signed by authorized representatives of both parties; and (3) attached to the original of this MOU.

This MOU shall become effective when signed by all parties. Both the Tribe and DCFS shall sign any amendments to this MOU in writing. All disputes arising under this MOU will be handled through good faith negotiation between the Tribe and DCFS.

This MOU may be terminated by either of the parties with or without cause by giving 90 days prior written notice to the other party. However, no termination shall relieve either party from continuing to provide services to Skull Valley Goshute Indian children and their families that are ongoing at the time of the termination.

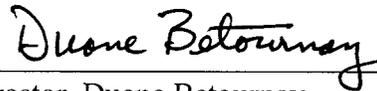
Sovereign Immunity

This MOU is not intended to, nor shall it be deemed to, waive the sovereign immunity of the Tribe or of the State.

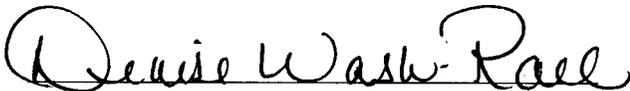
WE, THE UNDERSIGNED, HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS MEMORANDUM OF UNDERSTANDING BETWEEN THE SKULL VALLEY BAND OF GOSHUTE INDIANS AND UTAH'S DIVISION OF CHILD AND FAMILY SERVICES.



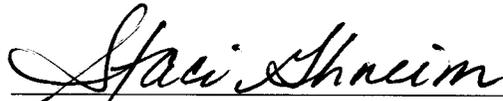
Chairperson, Lawrence Bear
Skull Valley Band of Goshute Indian Tribe



Director, Duane Betournay
Division of Child and Family Services



Director,
Skull Valley Band of Goshute Indian Tribe



Region Director, Staci Ghneim
Division of Child and Family Services