

Memorandum of Understanding
For Collaborative-Coordinated Implementation of the
Indian Child Welfare Act
with the Confederated Tribes of the Goshute Indian Reservations and
the 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 Confederated Tribes of the Goshute Indian Reservations

DISTINGUISHMENT OF CONFEDERATED TRIBES OF THE GOSHUTE INDIAN RESERVATIONS

In Utah, there are various Indian Tribes, two of which are the Goshute Indian Tribes: the Confederated Tribes of the Goshute Indian Reservations and the Skull Valley Goshutes. Each Tribe was placed on a different reservation. The Confederated Tribes of the Goshute Reservations’ home is the Deep Creek Reservation with its headquarters in Ibapah, Utah. The Skull Valley Goshutes’ home is located 35 miles west of Salt Lake City, Utah. This MOU will focus only on the Confederated Tribes of the Goshute Indian Reservations) (hereinafter referred to as the “Tribe”).

PHILOSOPHY

DCFS and the Tribe agree to perform their respective duties and responsibilities under this MOU in good faith and in a spirit of cooperation to accomplish the purpose of providing child welfare services to the Tribe.

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” child welfare services, which include child protection, case management, foster care licensing, the Indian Child Welfare Act of 1978, 25 U.S.C. 1901-1963 (hereinafter referred to as the “ICWA”), and Administrative Support to abused and neglected children of the Tribe.

GENERAL PROVISIONS

1. 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.

2. To recognize the purpose and intent of the ICWA is to protect the best interests of Indian children by preserving Tribal integrity and reducing the removal of children from Indian homes and environments.
3. That both the Tribe and DCFS seek to reduce the potential for cultural bias in evaluating home and family conditions and making decisions affecting Indian children and families.
4. DCFS shall involve the Tribe's Social Services/ICWA at the earliest possible point in social service intervention with Indian families, to:
 - a. Facilitate communication with the Indian family.
 - b. Prevent unnecessary removal of Indian children from their caretakers.
 - c. Secure emergency placement with an Indian relative or an Indian foster home whenever possible.
 - d. Assist in compliance with the notification requirements of the ICWA.
 - e. Assist in securing reliable identification of Indian children.
 - f. Assist in the placement of Indian children in appropriate homes.
5. 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 Program to resolve the questions.

WHEREFORE, IT IS AGREED:

Identification Of Indian Children And Tribal Affiliation

6. DCFS shall make diligent efforts to identify every child who is subject to the ICWA.
7. DCFS intake workers and case managers shall inquire whether the child/parents are American Indian/Alaska Native at **ALL** stages of the case.
 - a. This will facilitate the proper management of ICWA cases at an earlier point in the permanency planning process.
 - b. It will eliminate the sudden "surprise discovery" that there is an Indian child involved.
8. If the child's parents are unavailable or unable to provide a reliable answer regarding the Indian heritage of their child, the DCFS worker shall consider the following in determining the child's Indian heritage:
 - a. A thorough review of all documentation in the file, including contact with the previous worker.
 - b. Consultation with relatives/collaterals providing information that suggests the child/parent may be American Indian/Alaska Native.
 - c. 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.
9. The Tribal worker will:
 - a. Serve as a liaison for receiving and accepting all ICWA inquiries from the State.

- b. Independently or collaboratively conduct research on eligibility for membership in the Tribe to determine whether the child falls within the auspices of the ICWA and under the jurisdiction of the Tribe.
- c. Provide written response to inquiries, within appropriate timeframes, as to the intent of the Tribe.
- d. Serve as a liaison for the Tribe with follow-up or 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 Of And To Intervene

10. Formal notice of custody proceedings is required by Section 1912 (a) of the ICWA. Upon receiving protective custody of an American Indian/Alaska Native child residing outside the boundaries of the reservation, the DCFS worker shall inform the Attorney General’s (AG) office. The AG will send a formal notice to the Tribe(s), parents, and Indian custodian by registered mail, returned receipt requested.

11. The DCFS worker will give notice, by phone, to the Tribal representative of taking protective custody of an American Indian/Alaska Native child (Ibapah Goshute child).

- a. The DCFS worker shall establish Tribal contact as early as possible in an ICWA case.
- b. The DCFS worker shall work in partnership with Tribal social workers throughout the course of a child custody proceeding involving an American Indian/Alaska Native child.
- c. The DCFS worker should continually maintain contact with Tribal social workers.
- d. Once notified, the Tribal worker will work with the DCFS worker throughout the case process.

12. 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.

13. The ICWA grants the Tribe the authority to intervene in any State court foster care placement to termination of parental rights proceeding “at any point in the proceeding.”

14. The Tribe intervening is a party to the proceeding and has the same rights to notice of all hearings and assert its interest, the right of access to court records, the right to retain counsel if it chooses, the right to appeal, the right to present witnesses, to cross-examine witnesses, and to present other relevant evidence at the hearing.

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

The Tribe is authorized to develop and implement Tribal foster home standards, conduct Tribal foster home studies, certify or license a Tribal foster home, and place an Indian child in a licensed or certified Tribal home in accordance with the ICWA. The State shall give full faith and credit to the Tribe’s certification or licensure of Tribal foster homes according to Tribal foster home standards.

The Utah Department of Human Services is authorized to develop and implement foster home standards, conduct home studies, license a home in the State of Utah as a foster

home, and place a child in a licensed foster home in accordance with Utah Code §62A-4a-101, et seq. and §62A-2-101, et seq. The Tribe shall give full faith and credit to the State's licensure of foster homes according to State law.

For purposes of this MOU, a Tribal home is defined as a home in which the head of household, spouse of the head of household, or the child's primary caregiver is residing in the home and is either an enrolled member of the Tribe or is eligible for membership in the Tribe. A Tribal home is also defined as a home in which (1) the head of household, spouse of the head of household, or the child's primary caregiver is residing in the home and is either a member of, or eligible for membership in, any Federally-recognized Tribe; and (2) the home is located on the Confederated Tribes of Goshute Indian Reservation.

Foster Care Payment

22. DCFS agrees that in the event an Ibapah 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.

23. If requested, DCFS agrees to assist the Tribe and foster parents in the preparation of the appropriate claim forms for foster care provided under the terms of this MOU, payments of such claim to be made directly to the foster parent.

Preference Placement

24. For foster care or pre-adoptive placement, the placement preferences in order of priority are:

- a. A member of the Ibapah Goshute child's extended family.
- b. A foster home licensed and specified by the Tribe.
- c. An Indian foster home licensed or approved by the State.
- d. 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.

25. For adoption placements:

- a. A member of the Ibapah Goshute child's extended family.
- b. Other members of the Ibapah Tribe.
- c. Other Indian families.

26. DCFS workers shall give preference to the ICWA foster and pre-adoptive placements, unless the Indian child's Tribe has established a different order of placement. The worker shall contact the Tribe to discuss Tribal placement preferences and inquiry shall be made regarding the Tribe's customary definition of extended family. If the Tribe has no other preferences, the DCFS worker will adhere to the following items:

- a. Ibapah Goshute 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.
- b. In so far as possible, DCFS shall adhere to the prevailing Ibapah Goshute social and cultural standards in the placement of an Ibapah Goshute child.

- c. DCFS shall consult with the Tribe regarding all questions that relate to the Ibabah Goshute social and cultural standards.
- d. In any proceeding in which the State is unable to comply with the 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 the Ibabah Goshute Social Services contact person.

Active Efforts

27. DCFS shall undertake active efforts to provide remedial services and rehabilitative programs to the Indian family subsequent to an investigation and before a decision is made to place the child out of home.

28. 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.

29. To reduce the potential for cultural bias when evaluating home and family conditions and making decisions affecting Indian children and families, the DCFS worker shall involve the Tribe and Indian organizations at the earliest possible point of intervention.

30. 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.

31. In any State court proceeding where the ICWA applies and where there has been a petition to transfer by either parent, Indian custodian, or the Indian child's Tribe, the court shall transfer such proceeding to the jurisdiction of the Tribe unless one of the following occurs:

- a. Objection by either parent.
- b. Evidence of good cause to the contrary.
- c. Declination by the Tribal court.

32. If the Tribe declines jurisdiction, such declination must be provided to the State within 45 days of the filing of the petition to transfer. The Tribe's declination must be a court order signed by the Tribal judge and either the Tribal Chairman or authorized representative in order to be valid.

33. If the Tribe accepts jurisdiction, such acceptance must be provided to the State within 45 days of the filing of the petition to transfer. The Tribe's acceptance must be a court order signed only the Tribal judge in order to be valid.

Case Conference

34. If the State and the Tribe disagree about the advisability of transfer of a case, placement, or the provision of services, a case conference shall be held to attempt to resolve the parties' differences. If they cannot agree, the State shall proceed in

accordance with the Utah State laws and the ICWA until such time as the State court rules on transfer of jurisdiction, placement, or other provision of services.

Determine Jurisdiction

35. The ICWA of 1978 (25 U.S.C. §1901) 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.

36. If the child lives or resides on a reservation with jurisdiction over custody matters, or if the child is already a ward of a Tribal court, State courts lack jurisdiction and the case must be dismissed (25 U.S.C. §1911 (a)). When the child has been taken into custody in an emergency, the case may be transferred to Tribal court in lieu of dismissal (25 U.S.C. §1922).

37. The State cannot properly exercise jurisdiction if the child is a resident or domiciled on federally-recognized reservations or if the child is a ward of the Tribal court.

Practice Guidelines For Ibabah Goshute Indian Children In State Jurisdiction And DCFS Custody

38. When DCFS acquires custody in an involuntary proceeding of an Ibabah Goshute child or where a new foster care placement selection for such a child already in DCFS custody is necessary, the DCFS worker and the AG 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 worker with regard to the availability of potential extended family placements and available licensed Tribal foster homes. The Tribal representative will also provide the DCFS worker with information concerning available Tribally-licensed foster homes.

39. In the event DCFS determines that placement in a foster home is required, the DCFS worker and Tribal representative shall make a joint selection of the most appropriate foster placement for the child. When it is mutually agreed that a Tribally-licensed foster home capable of meeting the needs of the child 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. If a dispute arises between the Tribal representative and the DCFS worker, the judge with jurisdiction in the matter will need to resolve it.

CONFIDENTIALITY

The Tribe and State shall adhere to all confidentiality restrictions legally applicable in performing child welfare services, and they shall not reveal confidential information to anyone who is not authorized to receive confidential information and who does not need such information.

COURT COORDINATION

State employees will testify in Tribal court upon advance receipt of a written request by certified mail or valid subpoena. Tribal employees will testify in State court upon advance receipt of a written request by certified mail or valid subpoena.

AGs and Guardians ad Litem can appear in Tribal court on behalf of their clients.

TERMS

Any provision 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 upon the signatures of 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 180 days prior written notice to the other party. However, no termination shall relieve either party from continuing to provide services to Ibapah Goshute 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.

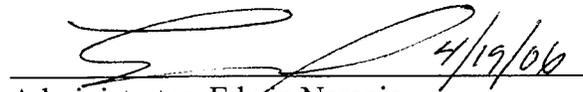
WE, THE UNDERSIGNED, HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS MEMORANDUM OF UNDERSTANDING BETWEEN THE CONFEDERATED TRIBES OF THE GOSHUTE INDIAN RESERVATIONS AND THE DIVISION OF CHILD AND FAMILY SERVICES.



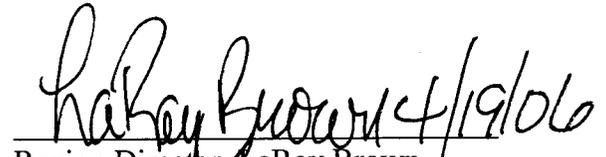
Chairperson, Rupert Steele
Confederated Tribes of the
Goshute Indian Reservation



Director, Richard Anderson
Child and Family Services



Administrator, Edwin Naranjo
Confederated Tribes of the
Goshute Indian Reservation



Region Director, LaRay Brown
Child and Family Services