

Memorandum of Understanding
For Collaborative/Coordinated Implementation of the
Indian Child Welfare Act
With the Northwestern Band of the Shoshone Nation
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 “Child and Family Services”) and the Northwestern Band of the Shoshone Nation (hereinafter referred to as the “NWBSN”).

PHILOSOPHY

Child and Family Services and NWBSN 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 NWBSN Indian children.

PURPOSE

The purpose of this MOU is to set forth the terms, definitions, and conditions regarding the duties and responsibilities of Child and Family Services and NWBSN to provide “best practice” Indian child welfare services; which include child protection, case management, foster care licensing, Indian Child Welfare Act (hereinafter referred to “ICWA”), and administrative support to abused and neglected NWBSN children and their families.

Northwestern Band Of The Shoshone Nation

Until the middle of the 19th century, the NWBSN moved throughout a large territory from northern Utah to southern Idaho, and from western Wyoming to eastern Nevada. Their livelihood depended upon the rich grasslands that provided wild grains for themselves and their horses. Ten Bands comprised the original Northwestern Bands, and the size of the Bands varied depending upon needs: small groups were favored where resources were widely scattered and not numerous; larger groups were needed in times of plenty or when warfare was the only way to procure food and clothing. Band membership was fluid; with each family deciding who they wanted to follow and how many people they thought they should live with in order to meet their own needs.

Members of the current NWBSN are descendants of families that followed the leaders Bear Hunter, Lehi, and Sagwitch. These leaders and their followers ranged over large areas in northern Utah and southern Idaho from the Salt Lake Valley to the Snake River. Beginning in the late 1840’s, members of the Church of Jesus Christ of Latter-Day Saints began moving into areas that the Shoshones used for their livelihood. Shoshone grasslands were plowed, and the natives had to compete with the new settlers for game animals. In the 1850’s, mass migration began to the Oregon Territory. These new immigrants also competed with the Shoshone’s for an ever-increasing supply of natural resources.

Misunderstandings often occurred along the trail, which often led to conflicts between the Shoshones and the immigrants. The discovery of silver in Montana and gold in California brought additional people seeking their fortunes. All of these activities displaced the Shoshones from their traditional gathering and hunting lands. The eventual result of these occasional conflicts led to the Bear River Massacre on January 29, 1863. A village of Shoshone was massacred by federal troops from Camp Douglas, Salt Lake City, Utah. While a series of treaties and agreements in 1863 left southern Idaho and northern Utah as Shoshone country, the second Treaty of Ft. Bridger in 1868 ceded those lands to the government of the United States. Some members of the original ten Northwestern Bands settled on the reservations created in 1868 at Wind River, Wyoming and Ft. Hall, Idaho.

The NWSBN today is a group of people largely descended from the survivors and near relatives of survivors of the Bear River Massacre, who chose not to relocate to a reservation but remained in their traditional historic lands in northern Utah and southern Idaho. Although the NWSBN signed the Treaty of Ft. Bridger that ceded vast land holdings to the United States government, they received very few services from the federal government until the early 1980's. There are currently 466 tribal members, and most members of the tribe today live between Salt Lake City, Utah and Pocatello, Idaho.

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 that the purpose and intent of the 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 and efforts to do so should be documented, with or without collaboration of the NWBSN.
3. That both the NWBSN and Child and Family Services seek to reduce the potential for cultural bias in evaluating home and family conditions and making decisions affecting Indian children and families.
4. Child and Family Services shall involve the NWBSN designee at the earliest possible point in social service intervention with Indian families, for the purpose 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 the state in the notification requirement 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 NWBSN shall be decided by the NWBSN and such decisions shall be conclusive and irrefutable. If Child and Family Services has questions concerning tribal membership of a particular individual, Child and Family Services shall communicate with the child's NWBSN designee to resolve the questions.

WHEREFORE, IT IS AGREED:

Identification Of Indian Children And Tribal Affiliation

1. Child and Family Services shall make diligent efforts to identify every child who is subject to the ICWA.
2. The Child and Family Services 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.
3. If the child’s parents are unavailable or unable to provide a reliable answer regarding the Indian heritage of their child, the Child and Family Services 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.
4. The NWBSN designee shall be Bruce Parry, Executive Director of NWBSN.

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

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

1. Upon receiving protective custody of an American Indian/Alaska Native child residing outside the boundaries of the reservation, the Child and Family Services worker shall inform the Attorney General’s (AG) office. The AG will send a formal notice to the NWBSN, parents, and Indian custodian by registered mail, returned receipt requested.
2. The Child and Family Services worker will give notice, by phone, to the tribal representative of taking protective custody of a NWBSN child.
 - a. The Child and Family Services worker shall establish tribal contact as early as possible in an ICWA case.
 - b. The Child and Family Services worker shall work in partnership with the NWBSN designee throughout the course of a child custody proceeding involving an American Indian/Alaska Native child.
 - c. The Child and Family Services worker should continually maintain contact with the NWBSN designee.
 - d. Once notified, the NWBSN designee will work with the Child and Family Services worker throughout the case process.
3. If the NWBSN declines jurisdiction, the NWBSN will still 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.

4. ICWA grants the NWBSN the authority to intervene in any state court foster care placement to termination of parental rights proceeding, "at any point in the proceeding."
5. 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, the right to cross-examine witnesses, and the right to resent other relevant evidence at the hearing.

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

1. The NWBSN 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. Child and Family Services shall give full faith and credit to the NWBSN's certification or licensure of tribal foster homes according to tribal foster home standards.
2. 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 NWBSN shall give full faith and credit to the state's licensure of foster homes according to state law.
3. Child and Family Services will take the lead and responsibility to direct or thru contract services, advertise and recruit Native American families to be foster homes. Child and Family Services will also be responsible for the training and retention of both Native American and non-Indian foster parents and will collaborate with the Office of Licensing in the licensing of Native American foster homes.
4. 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 NWBSN or is eligible for membership in the NWBSN. 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 NWBSN reservation.
5. On a case-by-case basis the state worker shall request permission from NWBSN to utilize a NWBSN licensed foster home.

Foster Care Payment

1. Child and Family Services agrees that in the event a NWBSN child is placed in protective custody and placed in a foster home licensed or approved by the NWBSN, Child and Family Services shall pay the costs of foster care in the same manner and to the same extent as Child and Family Services pays the costs of foster care to state licensed or state approved homes.
2. If requested, Child and Family Services agrees to assist the NWBSN and foster parents in the preparation of the appropriate claim forms for foster care provided under the terms of this MOU, with payments of such claim to be made directly to the foster parent.

§ 1915. ICWA Preference Placement

1. The ICWA placement preferences in order of priority for foster care or pre-adoptive placement are:
 - a. A member of the NWSBN child's extended family;
 - b. A foster home licensed and specified by the NWBSN;
 - c. A Indian foster home licensed or approved by the state; or
 - d. An institution for children approved by the NWBSN or operated by an Indian organization, which has a program suitable to meet the child's needs.
2. The ICWA adoption placements:
 - a. A member of the NWBSN child's extended family;
 - b. Other members of the NWBSN; or
 - c. Other Indian families.
3. Child and Family Services 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 NWBSN to discuss tribal placement preferences and inquiry shall be made regarding the NWBSN's customary definition of extended family.
 - a. NWSBN 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, Child and Family Services shall adhere to the prevailing NWBSN's social and cultural standards in the placement of an NWBSN child.
 - c. Child and Family Services shall consult with the NWBSN regarding all questions that relate to the social and cultural standards.
 - d. In any proceeding in which Child and Family Services is unable to comply with the ICWA placement preference pursuant to 25 U.S.C. §1915, Child and Family Services shall prepare a report documenting its efforts to comply with the order of preference and shall send it the NWBSN's designee.

Active Efforts

1. Child and Family Services shall undertake active efforts to provide remedial services to the Indian family subsequent to an investigation and before a decision is made to place the child out of home.
2. The rehabilitative effort should take into account the prevailing social and cultural conditions and the way of life of the NWBSN. These requirements are meant to assure that both evaluation of the problem and development of the treatment plan are culturally appropriate.
3. To reduce the potential for cultural bias when evaluating home and family conditions and making decisions affecting Indian children and families, the Child and Family Services worker shall involve the NWBSN and Indian organizations at the earliest possible point of intervention.
4. Services in the community specifically designed for Indian families are to be used where available, including resources of the extended family, the NWBSN, 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. Reimbursement for these services is available.

Determine Jurisdiction

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.

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).

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 NWBSN Children In State Jurisdiction And Child And Family Services Custody

When Child and Family Services acquires custody in an involuntary proceeding of an NWBSN child or a child believed to be an Indian, or where a new foster care placement selection for such a child already in Child and Family Services custody is necessary, the Child and Family Services worker and the AG shall contact the NWBSN designee 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 NWBSN designee shall provide information to the Child and Family Services worker with regard to the availability of potential extended family placements, which is the first placement preference of the ICWA. The NWBSN designee will also provide the Child and Family Services worker with information concerning available tribally licensed foster homes.

In the event Child and Family Services determines that placement in a foster home is required, the Child and Family Services worker and NWBSN designee 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 NWBSN designee shall notify Child and Family Services of their decision. Child and Family Services will confirm with the NWBSN designee that the proposed placement is an approved foster home. If the foster home has decided against placement with them, then the NWBSN designee and Child and Family Services shall make a new selection.

Training

Child and Family Services will be responsible for training DCFS staff and new employees on the application and intent of the Indian Child Welfare Act.

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.

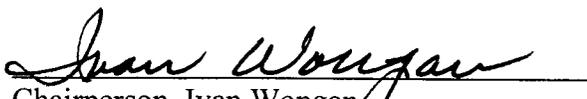
This MOU shall become effective on 1-10-07. Both the NWBSN and Child and Family Services shall sign any amendments to this MOU in writing. All disputes arising under this MOU will be handled through good faith negotiation between the NWBSN and Child and Family Services.

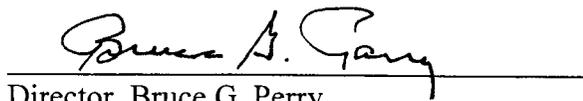
This MOU may be terminated by either of the parties with or without cause by giving 30 days prior written notice to the other party. However, no termination shall relieve either party from continuing to provide services to NWBSN children and their families that are ongoing at the time of the termination.

Sovereign Immunity

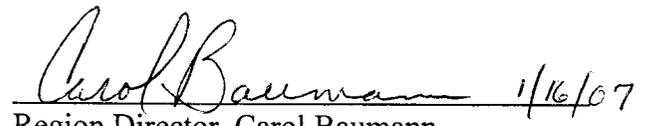
This MOU is not intended to, nor shall it be deemed to, waive the sovereign immunity of the NWBSN or of Child and Family Services.

WE, THE UNDERSIGNED, HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS MEMORANDUM OF UNDERSTANDING BETWEEN THE NORTHWESTERN BAND OF THE SHOSHONE NATION AND THE DIVISION OF CHILD AND FAMILY SERVICES.


Chairperson, Ivan Wongan
Northwestern Band of the Shoshone Nation


Director, Bruce G. Perry
Northwestern Band of the Shoshone Nation

 10 Jan 07
Director, Richard Anderson
Division of Child and Family Services

 1/16/07
Region Director, Carol Baumann
Division of Child and Family Services