

## **Amended Memorandum of Understanding Between The Paiute Indian Tribe of Utah and The State of Utah Department of Human Services**

This Memorandum of Understanding (hereinafter referred to as the "MOU") is entered into by and between the Utah Department of Human Services Division of Child and Family Services (hereinafter referred to as "DCFS"), the Utah Department of Human Services Office of Licensing (hereinafter referred to as "OL"), and the Paiute Indian Tribe of Utah (hereinafter referred to as the "Tribe" or "PITU"), and collectively referred to as the "Parties". This amended MOU terminates and replaces the MOU executed by DCFS on 6/8/09 and by PITU on 1/28/09.

### **PHILOSOPHY**

The Parties 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 Paiute Indian children, while recognizing the purpose and intent of the Indian Child Welfare Act of 1978 (hereinafter referred to as "ICWA", 25 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.

### **PURPOSE**

The purpose of this MOU is to set forth the terms and conditions regarding the duties and responsibilities of the Parties to provide "best practice" child welfare services to Paiute Indian children and families; which include child protection, case management for in-home and foster care services, foster care licensing, administrative support, and other services to abused, neglected and dependent Paiute Indian children and their families. This is done in accordance with Utah law and ICWA.

### **PAIUTE INDIAN TRIBE OF UTAH**

PITU was federally recognized on April 3, 1980, by an act of Congress (25 U.S.C. § 761, et seq.). The Tribe consists of five constituent bands: Koosharem, Kanosh, Cedar, Indian Peaks, and Shivwits. These bands are located in Sevier, Millard, Iron and Washington Counties of Southwestern Utah. The Tribal Council is the governing body of the Tribe and is vested with executive and legislative power under the Tribal Constitution (Tribal Constitution, Articles IV, V, and IX). Each of five constituent Bands elects a band chairperson, who then jointly comprise the Tribal Council. A Tribal Chairperson is elected to preside at Tribal Council meetings, act as the Tribe's official representative and spokesperson and manage Tribal government staff. The Tribal Headquarters is located in Cedar City, Utah.

## **JURISDICTION**

The governmental powers of the Paiute Indian Tribe of Utah extend within the exterior boundaries of the Tribe's Reservation land. (Tribal Constitution, Article I).

This MOU is authorized by and jurisdiction is conferred pursuant to ICWA.

The Tribe does not maintain an independent civil or criminal Tribal court system and does not exercise exclusive jurisdiction over Indian child custody proceedings under ICWA (25 U.S.C. 1911).

Accordingly, the Parties to this MOU recognize and agree that the Tribe's children and families are entitled to the same protection and services from DCFS and the juvenile courts of the State of Utah as are afforded other children and families in Utah, whether they reside or are domiciled on or off the Reservation.

## **WHEREFORE, IT IS AGREED:**

### **GENERAL PROVISIONS**

1. The Parties shall seek to reduce the potential for cultural bias in evaluating home and family conditions and making decisions affecting Indian children and families.
2. DCFS shall involve the PITU Behavioral Care Department at the earliest possible point in social service intervention with Paiute Indian families for the purpose of:
  - a. Identifying Paiute Indian children.
  - b. Increasing awareness of family dynamics.
  - c. Facilitating communication with the Paiute Indian family.
  - d. Preventing unnecessary removal of Paiute Indian children from their caretakers.
  - e. Securing emergency placement with a Paiute Indian relative, or a Paiute Indian foster home whenever possible.
  - f. Complying with the notification requirements of ICWA.
  - g. Placing Paiute Indian children in appropriate homes.

### **IDENTIFICATION OF INDIAN CHILDREN AND TRIBAL AFFILIATION**

3. DCFS shall make diligent efforts to identify every child who is subject to ICWA.
4. DCFS intake workers and case managers shall inquire whether the child/parents are American Indian/Alaska Native at the earliest stages of the case, and document the results in SAFE. Best practice would indicate that cultural responsiveness be pursued throughout the duration 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.
5. 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(s). If DCFS is unable to contact previous worker(s), it shall document its efforts to comply with this provision.
  - 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.
6. When DCFS believes that a child subject to investigation or services may be a PITU Tribal member or eligible for membership, the DCFS worker shall provide prompt telephonic notification to the PITU Behavioral Care Department (435-586-1112 (fax) 435-586-7388) and invite them to participate in all case staffings, court hearings, and child and family team meetings.
7. Upon notification, the PITU Behavioral Care Department will provide eligibility determination telephonically within two business days. Formal written determination shall be provided within ten days.
8. 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.

#### **FORMAL NOTICE AND INTERVENTION**

9. Formal Notice of child custody proceedings is required by ICWA (25 U.S.C. § 1912 (a)). Upon initiation of child custody proceedings involving a PITU child, the DCFS worker shall inform the Attorney General's (AG) office. DCFS will send a formal notice to the Tribe(s), parents, and Indian custodian by registered mail, return receipt requested, or by personal service.
10. The Tribe has the right to intervene and participate in child custody proceedings involving Tribal children as an interested party at any point in the proceedings. Upon intervention, the Tribe has the right to notice of all hearings and to assert its interest, the right of access to court records, the right to retain counsel if it chooses, the right to present witnesses, to cross-examine witnesses, and to present other relevant evidence at the hearing, and the right to appeal.

## **NOTICE AND COOPERATION**

11. As early as possible, the DCFS worker will give telephonic notice to the designated PITU Behavioral Care Department representative when DCFS initiates an investigation or services involving a Paiute Indian child.
12. The Parties shall comply with all applicable confidentiality restrictions, including but not limited to ICWA, the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3205), Utah Code Annotated 62A-4a-412, and Utah Code Annotated 63G-2-101, et seq. DCFS shall provide information required by federal Bureau of Indian Affairs audits.
13. The Parties will work cooperatively throughout the course of investigations and services, multi-disciplinary meetings, child and family team meetings, and other case staffings and court hearings.
14. When a PITU Behavioral Care Department or other Tribal representative has reason to believe that abuse, neglect and/or dependency has occurred, it will be immediately reported to DCFS centralized intake (toll free 1-877-797-3237) or state law enforcement, in accordance with the reporting statute (Utah Code 62A-4a-403). When DCFS or a PITU Behavioral Care Department or other Tribal representative observes any violations relating to licensure in a foster home that is licensed by OL, they will immediately notify OL.
15. If during the course of providing services to Tribal members, the PITU Behavioral Care Department becomes aware that services or intervention by DCFS may become necessary to prevent abuse, neglect or dependency, the PITU Behavioral Care Department will notify DCFS as early as possible.
16. Whenever the PITU Behavioral Care Department believes that state court intervention is required to remove a Tribal child from its home, or to provide court ordered services to a Tribal family for abuse, neglect or dependency, it shall schedule a staffing with DCFS, and other appropriate agencies (AG & Guardian Ad Litem), to assess the case for court intervention.

## **FOSTER HOMES**

17. 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.
18. **Tribal Foster Care Licensing and Monitoring on the PITU Reservation.**
  - a. **Tribal Foster Care and Kinship Licensing Standards and Procedures.** The Tribe shall use its own foster care and kinship licensing standards and procedures in determining the suitability of a home on the PITU Reservation to provide foster care, and agrees to provide OL and DCFS a copy of any changes made to those standards within thirty (30) days after passage by the Tribe.

- b. Full Faith and Credit. The OL and DCFS shall give full faith and credit to the Tribe's licensure of Tribal foster and kinship homes on the PITU Reservation according to standards developed and approved by the Tribe.
  - c. Monitoring and Investigation. In accordance with Tribal policy and procedure, the Tribe shall make reasonable efforts to monitor, investigate, and enforce current Tribal foster care licensing standards in each foster home it has licensed on the Reservation.
19. **Tribal Foster Care Licensing and Monitoring Outside of the PITU Reservation.**
- a. The Tribe shall not license foster care homes that are outside of the PITU Reservation in the State of Utah without first obtaining a Child Placing Foster license from the OL.
  - b. If the Tribe licenses foster care homes outside of the PITU Reservation in the State of Utah under the authority of a Child Placing Foster license, the Tribe shall utilize OL foster care licensing standards.
  - c. Current foster care licensing standards utilized by the OL are available at <http://le.utah.gov/—code/TITLE62A/62A02.htm> and <http://www.rules.utah.gov/publicat/code/r501/r501.htm>
20. **OL Foster Care Licensing on the PITU Reservation.**
- a. The Tribe may request OL to license a foster home on the PITU Reservation.
  - b. The OL shall utilize its own foster care licensing standards when asked to determine the suitability of homes to provide foster care on the PITU Reservation.
  - c. Current foster care licensing standards utilized by the OL are available at <http://le.utah.gov/—code/TITLE62A/62A02.htm> and <http://www.rules.utah.gov/publicat/code/r501/r501.htm>
  - d. Full Faith and Credit. The Tribe shall give full faith and credit to foster homes licensed according to State law standards by OL at the Tribe's request on the PITU Reservation.
21. **OL Foster Care Monitoring, Investigation and Enforcement on the PITU Reservation.**
- a. The OL is authorized to and shall monitor, investigate, and enforce current OL foster care licensing standards in each foster home it has licensed.
  - b. The Tribe shall assist the OL if the OL requests support in performing these duties in a foster home that involves an Indian child.
  - c. In the event that the OL determines that a current or prospective foster home licensed by OL is not in compliance with its current foster care licensing standards, it may deny, place conditions on, suspend, or revoke the foster care license by serving a notice of agency action.
  - d. The sole remedy available for a foster home applicant or licensee licensed by OL to appeal the notice of agency action is through an Administrative Hearing in accordance with Utah Code Annotated Title 63G, Chapter 4.
22. DCFS may place PITU children in foster homes licensed by the Tribe and the Tribe may place PITU children in foster homes licensed by OL, if such placement is mutually agreed upon by the Tribe and DCFS.
23. All foster homes accepting children who are in State custody must meet Social Security Act Title IV-E licensing standards.

24. Tribal Behavioral Care Department workers will attend and testify at all OL administrative and court hearings upon request.

### **FOSTER CARE PAYMENT**

25. DCFS agrees that in the event a Paiute child is placed in the State's 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 homes.
26. 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**

27. For foster care or pre-adoptive placement, the placement preferences in order of priority are:
  - a. A member of the Paiute child's extended family;
  - b. A foster home licensed, approved or specified by the Tribe;
  - c. An Indian foster home licensed or approved by the State; or
  - 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.
28. For adoption placements:
  - a. A member of the Paiute child's extended family
  - b. Other members of the Paiute Tribe; or
  - c. Other Indian families.
29. 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.
  - a. Paiute 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.
  - b. In so far as possible, DCFS shall adhere to the prevailing Paiute social and cultural standards in the placement of a Paiute child.
  - c. DCFS shall consult with PITU regarding all questions that relate to the social and cultural standards of the Tribe.
  - d. In any proceeding in which the State is unable to comply with the ICWA placement preference pursuant to 28 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 PITU Behavioral Care Department contact person.

## **ACTIVE EFFORTS**

30. DCFS 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, except when an emergency removal and placement is necessary in order to prevent imminent physical damage or harm to the child.
31. 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.
32. 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.
33. 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.

## **TERMS**


34. 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 the Parties; and (3) attached to the original of this MOU.
35. This MOU shall become effective upon the signature of all Parties. The Parties shall attempt to resolve any disputes arising under this MOU through good faith negotiation.
36. This MOU may be terminated by any Party, with or without cause, by giving 180 days prior written notice to the other Parties. Such termination shall not affect any action or proceeding over which a court has already assumed jurisdiction. Upon termination of this MOU, the Parties will use their best efforts to cooperate and provide for a smooth transition of client services.

## **SOVEREIGNTY AND SOVEREIGN IMMUNITY**

The Tribe grants permission for DCFS and OL staff to enter the PITU Reservation for the purpose of providing the services described in this MOU.

This MOU is not intended, 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 PAIUTE INDIAN TRIBE OF UTAH, THE OFFICE OF LICENSING, AND DIVISION OF CHILD AND FAMILY SERVICES.

  
\_\_\_\_\_  
Jeanine Borchardt, Chairperson      Date  
Paiute Indian Tribe of Utah

 31 Aug 10  
\_\_\_\_\_  
Brent Platt, Director      Date  
Division of Child & Family Services

 8/31/10  
\_\_\_\_\_  
Ken Stettler, Director      Date  
Office of Licensing