

**Memorandum of Understanding
Between The Paiute Indian Tribe of Utah and
The State of 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 Paiute Indian Tribe of Utah (hereinafter referred to as the "Tribe" or PITU).

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 Paiute Indian children, while recognizing the purpose and intent of the Indian Child Welfare Act of 1978 (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 DCFS and the Tribe 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 the Indian Child Welfare Act (herein referred to as "ICWA").

PAIUTE INDIAN TRIBE OF UTAH

The Paiute Indian Tribe of Utah was federally recognized on April 3, 1980, by an act of Congress. (25 U. S. C. § 761) The Tribe consists of five constituent bands: Koosharem, Kanosh, Cedar City, 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, legislative, and judicial power under the Tribal Constitution (Tribal Constitution, Articles IV, V, and IX). All five constituent Bands elect a band chairperson who then comprises 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 Paiute Indian Tribe of Utah is a Public Law 280 (67 Stat. 588) tribe subject to the civil and criminal jurisdiction of the State of Utah. 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 Tribe and DCFS 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 Paiute Social Services at the earliest possible point in social service intervention with Paiute Indian families for the purpose of:
 - a. Identifying Paiute Indian children.
 - b. Facilitating communication with the Paiute Indian family.
 - c. Preventing unnecessary removal of Paiute Indian children from their caretakers.
 - d. Securing emergency placement with a Paiute Indian relative, or a Paiute Indian foster home whenever possible.
 - e. Complying with the notification requirements of ICWA.
 - f. 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 the 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.
 - 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 affiliated with the Tribe, the DCFS worker shall provide prompt telephonic notification to Paiute Social Services

(435-586-1112 (fax) 435-586-7388) and invite them to participate in all case staffings, shelter hearings, and child and family team meetings.

7. Upon notification, Paiute Social Services 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 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, 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 Paiute Social Services representative when DCFS initiates an investigation or services involving a Paiute Indian child.

12. DCFS workers will work in partnership with tribal social workers throughout the course of investigations and services, and provide tribal social workers access to all relevant information concerning the case consistent with the rules of confidentiality.

13. Once notified, the tribal workers will work in partnership with the DCFS worker throughout the course of investigations and services, and will attend all multi-disciplinary meetings, child and family team meetings, and other case staffings and court hearings, when available.

14. When a Paiute Social Services representative, or tribal member, has reason to suspect that abuse, neglect and/or dependency has occurred, it will be immediately reported to state law enforcement or DCFS, in accordance with the reporting statute (Utah Code 62a-4a-403).

15. If during the course of providing services to tribal members, Paiute Social Services becomes aware that services or intervention by DCFS may become necessary to prevent abuse, neglect or dependency, Paiute Social Services will notify DCFS as early as possible.

16. Whenever Paiute Social Services 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 (Attorney General & Guardian ad Litem), to assess the case for court intervention.

RECOGNITION OF TRIBAL LICENSED FOSTER HOMES (Utah Code §62a-2-117)

17. The Office of Licensing and DCFS shall give full faith and credit to the Tribe's certification or licensure of tribal foster and kinship homes according to standards developed and approved by the Tribe.

18. 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.

19. The Tribe agrees to use its own foster care and kinship licensing or approval standards in determining the suitability of a home to provide foster care and its own procedure for approval of Indian foster homes and further agrees to provide DCFS within thirty (30) days after passage by the Tribe a copy of any changes made to those standards.

20. Due to 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.

21. The Tribe, utilizing its foster home standards, may approve or license the home to care for children affected by this MOU.

22. DCFS, utilizing its standards, may approve the home to care for children affected or unaffected by this MOU.

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

FOSTER CARE PAYMENT

24. DCFS agrees that in the event a Paiute 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.

25. 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

26. 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.

27. 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.

28. 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 the Paiute tribe regarding all questions, which relate to the Paiute 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 to the Paiute Social Services contact person.

ACTIVE EFFORTS

29. 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.

30. 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.

31. 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.

32. 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

33. 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.

34. This MOU shall become effective upon the signature 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.

