RESOLUTION OF THE
NAVAJO NATION COUNCIL
24th NAVAJO NATION COUNCIL -- First Year, 2019

AN ACTION
RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, BUDGET AND FINANCE, NAABIK'ÍYÁTI' COMMITTEE AND NAVAJO NATION COUNCIL; APPROVING AND AUTHORIZING THE INDIAN CHILD WELFARE ACT INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF UTAH'S DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILD AND FAMILY SERVICES AND THE NAVAJO NATION AND ITS DIVISION OF SOCIAL SERVICES

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. The Health, Education and Human Services Committee is the oversight committee for the Division of Social Services. 2 N.N.C. §401(C)(1).

B. The Budget and Finance Committee is established as a standing committee of the Navajo Nation Council with the authority to approve and accept Intergovernmental Agreements between the Navajo Nation and the State of Utah upon the recommendation of the standing committee which has oversight of the program which requested the Agreement. 2 N.N.C. §301 (B)(15).

C. The Naabik'íyáti' Committee is authorized to recommend resolutions to the Navajo Nation Council and coordinate all federal, county and state programs. 2 N.N.C §701 (A)(3)(4).

D. The Navajo Nation Council must approve all intergovernmental agreements by resolution. 2 N.N.C 164(A)

SECTION TWO. FINDINGS

A. The Indian Child Welfare Intergovernmental Agreement between the Navajo Nation and its Division of Social Services and the State of Utah and its Department of Human Services, Division

of Child and Family Services is entered into under 25 U.S.C. §1919 and the Utah Joint Powers Act and is predicated on a government to government relationship between the State of Utah and the Navajo Nation in a spirit of cooperation, coordination, communication, collaboration and good will.

B. This Indian Child Welfare Intergovernmental Agreement has been reviewed by the Navajo Nation Department of Justice and determined to be legally sufficient. See **Exhibit A**.

C. The Navajo Nation finds it to be in the best interest of the Navajo People and the children of the Navajo Nation to enter into this Indian Child Welfare Intergovernmental Agreement with the State of Utah, Department of Human Services, Division of Child and Family Services as found at Exhibit A.

SECTION THREE. APPROVALS

A. The Navajo Nation hereby approves and authorizes this Indian Child Welfare Intergovernmental Agreement between the Navajo Nation and its Division of Social Services and the State of Utah, Department of Human Services, Division of Child and Family Services, as found at Exhibit A.

B. The Navajo Nation hereby authorizes the President of the Navajo Nation to execute and effectuate this Agreement.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 19 in Favor, and 00 Opposed, on this 23rd day of May 2019.

Honorable Seth Damon, Speaker
24th Navajo Nation Council

May 30, 2019
DATE

Motion: Honorable Nathaniel Brown
Second: Honorable Mark A. Freeland

Speaker Seth Damon not voting



THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

March 11, 2019

24th Navajo Nation Council
Health, Education & Human Services Committee
Honorable Daniel E. Tso, Chairperson
P.O. Box 3390
Window Rock, AZ 86515

Re: Request for Legislation for Intergovernmental Agreement Between Division of Social Services and State of Utah, Division of Child and Family Services

Dear Honorable Tso:

The following attached signed Intergovernmental Agreement (IGA) is an agreement between the Navajo Nation, Division of Social Services and the State of Utah, Division of Child and Family Services. The original agreement between the two entities was signed May 6, 1996 and since then the agreement has been revised twice: December 12, 2007 and this latest revision. The IGA is basically a guide to assist both entities' child welfare departments in properly coordinating ICWA cases and cases that are considered to be exclusive jurisdiction.

The agreements are being submitted to your attention requesting for your assistance in getting a legislation, so the agreements can be heard by the appropriate Standing Committees within the tribal Council. On February 4, 2019, the State of Utah held a signing ceremony with the Navajo Nation, where President Jonathan Nez erroneously signed the agreements. We realize the agreements are to go be fully reviewed and approved by the Council before President Nez signs them. The signing ceremony was beyond our control. Therefore, we respectfully request that the Council accept the signed agreements and proceed with their review and approval process as normal.

We look forward to a favorable response. If you should have any questions, please call me at the telephone number below. Thank you for your assistance.

Sincerely,

Regina Yazzie, Program Manager

Acknowledge,

3/12/19

Virgil Pablo, Delegated Division Director

ATTACHMENTS

Document No. 012077 Date Issued: 02/20/2019

SECTION 164 REVIEW FORM

Title of Document: ICWA IG b/w Utah DHS and NNDSS/NCFS Contact Name: YAZZIE, REGINA

Program/Division: DIVISION OF SOCIAL SERVICES

Email: reginayazzie@navajo-nsn.gov Phone Number: (928) 871-6806

Division Director Approval for 164A: Virgil Pablo 2/20/19

Check document category; only submit to category reviewers. Each reviewer has a maximum 7 working days, except Business Regulatory Department which has 2 days, to review and determine whether the document(s) are sufficient or insufficient. If deemed insufficient, a memorandum explaining the insufficiency of the document(s) is required.

Section 164(A) Final approval rests with Legislative Standing Committee(s) or Council

			Sufficient	Insufficient
☐	**Statement of Policy or Positive Law:**			
	1. OAG:	Date:	☐	☐
☒	**IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds)**			
	1. OMB:	Date:	☐	☐
	2. OOC:	Date:	☐	☐
	3. OAG:	Date: 2/20/19	☑	☐

Section 164(B) Final approval rests with the President of the Navajo Nation

☐	**Grant/Funding Agreement or amendment:**			
	1. Division:	Date:	☐	☐
	2. OMB:	Date:	☐	☐
	3. OOC:	Date:	☐	☐
	4. OAG:	Date:	☐	☐
☐	**Subcontract/Contract expending or receiving funds or amendment:**			
	1. Division:	Date:	☐	☐
	2. BRD:	Date:	☐	☐
	3. OMB:	Date:	☐	☐
	4. OOC:	Date:	☐	☐
	5. OAG:	Date:	☐	☐
☐	**Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment:**			
	1. Division: Virgil Pablo	Date: 2/28/19	☑	☐
	2. OAG:	Date:	☐	☐
☐	**M.O.A. or Letter of Assurance expending or receiving funds or amendment:**			
	1. Division:	Date:	☐	☐
	2. OMB:	Date:	☐	☐
	3. OOC:	Date:	☐	☐
	4. OAG:	Date:	☐	☐

NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM

RECEIVED
FEB 28 2019
DEPARTMENT OF JUSTICE
RECEPTIONIST DESK

DOJ
2/28/19 @ 334
DATE / TIME
☐ 7 Day Deadline
DOC #: 012077 #2
SAS #:
UNIT: HSGU OAG

☐ RESUBMITTAL (Feb 2018)

*** FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE

DATE OF REQUEST: February 28, 2019
ENTITY/DIVISION: Social Services
CONTACT NAME: Regina Yazzie
DEPARTMENT: Navajo Children & Family Serv.
PHONE NUMBER: 871-4806
E-MAIL: Reginayazzie@navajo-nsn.gov

TITLE OF DOCUMENT: ICWA IGA / Utah DHS and NNDSS INOFS
X Needs AG signature

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 2/28 @ 344
REVIEWING ATTORNEY/ADVOCATE: KM

DATE/TIME OUT OF UNIT: 3/5 @ 10:14

DOJ ATTORNEY / ADVOCATE COMMENTS

Program is picking packet up with no further action from DOJ at this time. KM 3/5/19

REVIEWED BY: (*PRINT*)	DATE / TIME	SURNAMED BY: (*PRINT*)	DATE / TIME

DOJ Secretary Called: Gloria for Document Pick Up on 3/5 at 10:14 By: Smith

PICKED UP BY: (*PRINT*) DATE / TIME:

NNDOJ/DRRF-July 2013

NAVAJO NATION DEPARTMENT OF JUSTICE

DOCUMENT REVIEW REQUEST FORM

☐ RESUBMITTAL

RECEIVED
FEB 20 2019
DEPARTMENT OF JUSTICE
RECEPTIONIST DESK

DOJ
02/20/19 @ 137
DATE / TIME
☐ 7 Day Deadline
DOC #: 012077
SAS #:
UNIT: ASGW

*** FOR NNDOJ USE ONLY - DO NOT CHANGE OR REVISE FORM. VARIATIONS OF THIS FORM WILL NOT BE ACCEPTED. ***

CLIENT TO COMPLETE

DATE OF REQUEST: 02/20/19 ENTITY/DIVISION: Social Services
CONTACT NAME: (928) 871-6806 DEPARTMENT: NCFS
PHONE NUMBER: Regina Yazzie E-MAIL: reginayazzie@navajo-nsn.gov
TITLE OF DOCUMENT: ICWA 18A6/+ Utah DHS and NNDSS/NCFS

DOJ SECRETARY TO COMPLETE

DATE/TIME IN UNIT: 2/20 @ 2:40 REVIEWING ATTORNEY/ADVOCATE: KM
DATE/TIME OUT OF UNIT: 2/20/19 @ 4:15

DOJ ATTORNEY / ADVOCATE COMMENTS

Sufficient.

REVIEWED BY: (*PRINT*)	DATE / TIME	SURNAMED BY: (*PRINT*)	DATE / TIME
		Kandis Martine	2/20/19 4:01 pm

DOJ Secretary Called: Diana for Document Pick Up on 2/20/19 at 4:15 By: gm

PICKED UP BY: (*PRINT*) DATE / TIME:

NNDOJ/DRRF-July 2013

Document No. 012077 Date Issued: 02/20/2019

SECTION 164 REVIEW FORM

Title of Document: ICWA IG b/w Utah DHS and NNDSS/NCFS Contact Name: YAZZIE, REGINA

Program/Division: DIVISION OF SOCIAL SERVICES

Email: reginayazzie@navajo-nsn.gov Phone Number: (928) 871-6806

Division Director Approval for 164A: 2/20/19

Check document category; only submit to category reviewers. Each reviewer has a maximum 7 working days, except Business Regulatory Department which has 2 days, to review and determine whether the document(s) are sufficient or insufficient. If deemed insufficient, a memorandum explaining the insufficiency of the document(s) is required.

Section 164(A) Final approval rests with Legislative Standing Committee(s) or Council

☐ **Statement of Policy or Positive Law:** Sufficient ☐ Insufficient ☐

1. OAG: _____ Date: _____

☒ **IGA, Budget Resolutions, Budget Reallocations or amendments: (OMB and Controller sign ONLY if document expends or receives funds)**

1. OMB: _____ Date: _____ ☐
2. OOC: _____ Date: _____ ☐
3. OAG: _____ Date: 2/20/19 ☑

Section 164(B) Final approval rests with the President of the Navajo Nation

☐ **Grant/Funding Agreement or amendment:**

1. Division: _____ Date: _____ ☐ ☐
2. OMB: _____ Date: _____ ☐ ☐
3. OOC: _____ Date: _____ ☐ ☐
4. OAG: _____ Date: _____ ☐ ☐

☐ **Subcontract/Contract expending or receiving funds or amendment:**

1. Division: _____ Date: _____ ☐ ☐
2. BRD: _____ Date: _____ ☐ ☐
3. OMB: _____ Date: _____ ☐ ☐
4. OOC: _____ Date: _____ ☐ ☐
5. OAG: _____ Date: _____ ☐ ☐

☐ **Letter of Assurance/M.O.A./M.O.U./Other agreement not expending funds or amendment:**

1. Division: _____ Date: _____ ☐ ☐
2. OAG: _____ Date: _____ ☐ ☐

☐ **M.O.A. or Letter of Assurance expending or receiving funds or amendment:**

1. Division: _____ Date: _____ ☐ ☐
2. OMB: _____ Date: _____ ☐ ☐
3. OOC: _____ Date: _____ ☐ ☐
4. OAG: _____ Date: _____ ☐ ☐

INDIAN CHILD WELFARE INTERGOVERNMENTAL AGREEMENT BETWEEN THE UTAH DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILD AND FAMILY SERVICES AND THE NAVAJO NATION

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INDIAN CHILD WELFARE INTERGOVERNMENTAL AGREEMENT BETWEEN THE UTAH DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILD AND FAMILY SERVICES AND THE NAVAJO NATION

This Intergovernmental Agreement, herein called "Agreement," is between the STATE OF UTAH acting through its Division of Child and Family Services, (hereinafter "DCFS"), and the NAVAJO NATION, acting through its Division of Social Services, (hereinafter "NATION)" a Federally Recognized Indian Tribe.

I. AUTHORITY

A. In 1978, the Congress of the United States adopted the Indian Child Welfare Act, hereinafter called "ICWA," Public Law 95-608, codified as 25 U.S.C. § 1901-1963, "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families," 25 U.S.C. § 1901. As trustee, the United States has a direct interest in protecting Indian children who are members of or eligible for membership in an Indian tribe.

B. The ICWA authorizes Indian tribes and states to enter into agreements aimed at furthering the purposes of the ICWA 25 U.S.C. § 1919.

C. The State of Utah may enter into Cooperative Agreements with tribes as provided in the Utah Joint Powers Act.

D. The Department of Interior issued Regulations on June 14, 2016, effective December 12, 2016, 25 CFR 23, 81 FR 38864; and issued Guidelines for state courts on December 12, 2016.

E. Pursuant to these laws, the NATION and DCFS hereby enter into this Agreement, subject to the terms and conditions set out below.

II. PURPOSE AND POLICY

A. DCFS and the NATION recognize that:

1. There is no resource more vital to the continued existence and integrity of the NATION than its children.

2. DCFS has a direct interest in protecting Native American culture and supporting the cultural diversity of the citizens of the state of Utah.

3. This Agreement is entered into under 25 U.S.C. § 1919 and is predicated on a government-to-government relationship between the state of Utah and the

NATION in a spirit of cooperation, coordination, communication, collaboration, and good will.

4. Both voluntary and involuntary proceedings are of critical interest to the NATION to:
   a. Prevent cultural separation of Navajo children from their families and their Navajo community.
   b. Ensure Navajo children who are taken into state custody maintain contact with their Navajo culture.
   c. Ensure that the values of Navajo culture are preserved.

B. DCFS and the NATION agree that:

1. The primary purpose of this Agreement is to protect and further the best interests of Navajo Children and their families.

2. The general welfare including the health, care, safety, and supervision of Navajo children is the primary concern when providing services to their families.

3. Every effort will be made to ensure that Navajo children will be raised within their families and the Navajo culture.

4. The parties will work cooperatively in all child custody proceedings to protect the best interest of Navajo children and the legal rights of their parents or Indian custodians.

C. In fulfilling the terms of this Agreement, DCFS and the NATION will act in accordance with the full faith and credit provisions contained in 25 U.S.C. § 1911(d). The ICWA requires that the United States, every state, and every Indian tribe give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to public acts, records, and judicial proceedings of any other entity.

D. DCFS and the NATION support the provision of 25 USC § 1911(b) to transfer state court proceedings for foster care placement or the termination of parental rights of Navajo children not domiciled or residing within the Nation to the jurisdiction of the Navajo Nation upon petition of the NATION or the Navajo child's parent or Indian custodian, absent good cause to the contrary. The NATION and DCFS recognize that the ICWA provides that either parent may object to the transfer of the proceedings.

E. DCFS and the NATION desire to provide for the orderly transfer of jurisdiction over child custody proceedings and to enter into an agreement respecting care and custody of Navajo children, in accordance with the provisions of the ICWA.

F. This Agreement shall be interpreted in a manner that reflects the values of Navajo culture, custom, and tradition.

III DEFINITIONS (The following definitions are to be read consistently with the BIA Regulations.)

A. "Active Efforts" means affirmative, active, thorough and timely efforts intended primarily to maintain or reunite an Indian child with his or her family (see also IX.B).

B. "Concurrent jurisdiction" exists when the state and the Navajo Nation could assert jurisdiction over the same child custody proceeding.

C. "Courtesy supervision" is the conduct of routine case activities by one agency at the request of another. Each request for supervision will include provisions regarding purpose, conditions, time lines, goals, and appropriate reporting and follow up.

D. "DCFS" is the state of Utah, Division of Child and Family Services.

E. "Disrupted pre-adoption" means an adoption that ends prior to finalization.

F. "Dissolved adoption" means a finalized adoption that has been terminated.

G. "Domicile" means more than physical presence alone of the child at the time of the actions giving rise to any court proceeding covered by this Agreement. Domicile means (1) for a parent or Indian custodian, the place at which a person has been physically present and that person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere; (2) for an Indian child, the domicile of the Indian child's parent(s) or Indian custodian or guardian. In the case of an Indian child whose parents are not married to each other, the domicile of the Indian child's custodial parent.

H. "Extended family" means a person who has reached the age of eighteen (18) and who is the minor's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first and second cousins, stepparent, godparent, or other individual approved by consensus through Navajo clan or kinship.

I. "Indian child" means any unmarried person who is under the age of eighteen (18) years and is either: (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

J. "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

K. "Intervention" occurs when the NATION intervenes in a state court child custody proceeding pursuant to 25 U.S.C. § 1911 (c). The NATION becomes a party to the state court proceeding and the state retains jurisdiction over that child to make a final disposition of the child, subject to the mandates of the ICWA.

L. "Jurisdiction" means the authority, capacity, power, or right of a court of law to take judicial action with respect to a child as provided in Navajo Nation, state or federal law. Jurisdiction of a court over a child shall not be determinative of which governmental entity is responsible for providing benefits associated with a Navajo child otherwise eligible for those benefits.

M. "Navajo Nation Family Court" means a court of the Navajo Nation vested with authority over child custody proceedings on the Navajo reservation

N. "Parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.

O. "QEW" means qualified expert witness (see also Section IV(D) Expert Witness, below).

P. "Reason to Know" for this agreement means "Reason to Believe."

Q. "Transfer of jurisdiction" occurs when the NATION petitions a state court for a transfer of jurisdiction over a child custody proceeding from the state to the NATION pursuant to 25 U.S.C. § 1911 (b), and the state court grants the petition.

IV. GENERAL PROVISIONS

DCFS and the NATION acknowledge that this Agreement binds them and their successors should the duties and responsibilities of DCFS and the NATION be delegated or transferred by their respective governments.

A. This Agreement applies to any unmarried child under the age of eighteen (18) who is a member, or is eligible for membership and is the biological child of a member of the Navajo Nation, herein referred to as a "Navajo child."

B. Verification of membership/eligibility with the Navajo Nation shall be determined by the NATION. The NATION's verification of membership/eligibility shall be conclusive.

1. Membership/eligibility inquiries shall be referred by DCFS to the NATION ICWA Office designated in Section V.C for processing. The NATION ICWA office shall make all applications for enrollment in the Navajo Nation.

2. The NATION ICWA Office will coordinate with the Navajo Nation Office of Vital Records for final verification of membership/eligibility.

3. To process verifications in a timely manner and to be consistent with a meaningful request, it is essential DCFS forward information regarding the child and parent(s), which should include, as available, the name(s) of the parent(s); parent(s)'s date(s) of birth; the child's name and date of birth; census number(s) of parent(s) and child; and the Certificate(s) of Navajo Indian Blood of parent(s) and child; and any aliases of parent(s).

4. If insufficient information to verify membership/eligibility is provided, the NATION will request additional information from DCFS in writing within (10) ten working days of receiving the membership/eligibility inquiry concerning the minor's membership/eligibility.

5. If DCFS has reason to know that the subject child is a Navajo child, DCFS shall treat the case as an ICWA case until such time the NATION notifies DCFS the child is not enrolled/eligible or the Court determines that ICWA does not apply.

C. DCFS and the NATION recognize that when a Navajo child is a subject of a state child custody proceeding, the free flow of information between DCFS and the NATION in relation to the Navajo child is proper and in the best interests of the Navajo child.

1. DCFS will make information, reports and records relating to the Navajo child available to the NATION to the extent contained in the ICWA, 25 USC § 1912(c) and will follow the statutory confidentiality restrictions of Utah Law in the performance of its responsibilities under this Agreement.

2. The NATION will follow the confidentiality restrictions of the Navajo Nation Privacy and Access to Information Act 2 NNC § 81 et seq.; and any other applicable confidentiality laws and policies.

3. DCFS and the NATION acknowledge that the disclosure of alcohol or drug abuse treatment records is governed exclusively by federal law.

D. Expert Witness

1. The NATION will provide, when available, DCFS with the names of qualified experts on issues of tribal customs regarding child rearing, parenting, and the role of extended family members raising Navajo children.

2. A qualified expert witness must be qualified to testify regarding whether the child's continued custody by the parent(s) or Indian custodian is likely to result in serious emotional or physical damage to the child and should be qualified to testify as to the prevailing social and cultural standards of the NATION.

3. A person may be designated by the NATION as being qualified to testify to the prevailing social and cultural standards of the NATION.

4. If expert testimony is required, DCFS will give preference to the expert designated by the NATION.

5. The DCFS social worker assigned or previously assigned to the child custody proceeding shall not testify as an ICWA expert.

E. DCFS staff will testify in Navajo Nation family court upon issuance of a written request by the NATION. NATION staff will testify in state court upon issuance of a written request by DCFS.

F. When establishing a permanency plan for a Navajo child, DCFS will provide notice to the NATION. The NATION shall be invited to all Child and Family Team Meetings/Case Consultations and may participate by phone. DCFS will consider the recommendations of the NATION when developing, preparing, and implementing any permanency plan for a Navajo child.

G. It is mutually agreed that there shall be established a Coordination Committee of representatives of DCFS and the NATION that shall meet quarterly or as needed to address such issues as:

1. Coordination and communication between parties.

2. Clarification of interpretation of this Agreement.

3. Reviews of policies and procedures.

4. Caseload trends and their implications.

5. Matters of mutual concerns.

6. Navajo customs.

7. Federal, state, and Navajo laws and regulations.

8. Other issues that may arise as deemed appropriate.

H. DCFS shall designate a liaison person in the DCFS administration who will be the primary point of contact with the NATION regarding DCFS' rules and practice guidelines and issues related to implementation of this Agreement. The DCFS liaison may be contacted at:

Indian Child Welfare Program Manager
Division of Child and Family Services
195 North 1950 West
Salt Lake City, Utah 84116
Telephone: (801) 703-0387
Fax: (801) 538-3993

I. The NATION shall designate a liaison person within its administration who will be the primary point of contact with the NATION'S administration regarding the NATION'S rules, policies, financial needs, and issues related to implementation of this Agreement. The NATION liaison may be contacted at:

The Navajo Nation
Navajo Children and Family Services
P.O. Box 1930
Window Rock, Arizona 86515
Telephone: (928) 871-6806
Fax: (928) 871-7667

J. In the spirit of the purpose and policy of this Agreement, the NATION and DCFS will make every effort to work together to resolve conflicts. This is especially important should the NATION get to a point where a decision has to be made regarding legal intervention in the state child custody proceeding. The preference will be to resolve matters out of court.

K. DCFS shall comply with the terms of this Agreement when it provides greater protection for the rights and role of the NATION than requirements of DCFS administrative rules, provided there is no violation of applicable laws and administrative rules.

V. NOTICE

A. DCFS must use due diligence to determine whether any child taken into custody is a Navajo child and, if so, DCFS shall give notice to the NATION in accordance with 25 U.S.C. § 1912 and 25 CFR § 23.107.

B. DCFS shall notify the NATION, as provided in this Agreement, of any instance where DCFS has received physical custody of a Navajo child and/or DCFS has reason to believe a child is a Navajo child. DCFS will notify the NATION of the following actions:

1. Involuntary proceedings involving placement of a Navajo child, including foster care placement or a change in placement, termination of parental rights, permanent guardianship, and pre-adoptive placement.

2. Voluntary proceedings involving placement of a Navajo child, including foster care placement, pre-adoptive placement, permanent guardianship, and relinquishments of parental rights.

3. Judicial hearings in all proceedings to which the NATION is entitled to notice under subsections 1 and 2 above, and any change in hearing dates and times.

4. Any disrupted pre-adoption/prospective adoption or dissolved adoption of a Navajo child.

C. DCFS shall provide notice of the actions listed in Section V.B of this Agreement when such proceedings involve a Navajo child to:

The Navajo Nation
Navajo Children and Family Services/ICWA Office
P.O. Box 1930
Window Rock, Arizona 86515
Telephone: (928) 871-6806
Fax: (928) 871-7667

D. DCFS shall give notice when the following involves a Navajo child:

1. When commencing a child custody proceeding in state court DCFS shall give a courtesy notice by telephone within twenty-four (24) hours (excluding weekends and holidays) of commencing the action. Notice shall include information about the scheduled court appearances. In addition, DCFS shall give written notice to the NATION contact office by certified or registered mail, return receipt requested, as soon as possible after commencing the action, but in no event, no later than five (5) days after the telephone notice.

2. When taking court ordered legal custody of a child DCFS shall give notice by telephone within twenty-four (24) hours (excluding weekends and holidays) of taking physical custody of the child. The Attorney General's office shall give written notice to the NATION contact office by certified or registered mail, return receipt requested, within five (5) days of the telephone notice (excluding weekends and holidays).

3. DCFS shall notify the NATION by telephone of any changes in scheduled hearings within twenty-four (24) hours (excluding weekends and holidays) after DCFS learns of a change in a scheduled hearing.

4. DCFS shall notify the NATION by telephone within twenty-four (24) hours (excluding weekends and holidays) of taking protective custody of a child placed in emergency kinship care.

E. Contents of the Notice: The oral and written notices required by this Agreement shall include the information in the ICWA Notice Form (see Appendix A) prepared by DCFS in a child custody proceeding, to the extent such information is available upon reasonable inquiry. In addition, the following information shall be provided:

1. With the consent of the court, a copy of all pleadings, such as orders, motions and petitions.

2. Any documentation regarding the child's or the parent(s) Navajo Nation enrollment status, including, if available, a Certificate of Navajo Indian Blood.

3. Information about the child's circumstances, including the name and date of birth of the child, the basis for the juvenile court's jurisdiction over the child, the date and time of any juvenile court proceeding regarding the child, and the reason for placement of the child.

4. Identification of any special needs of the child.

5. Names of all parties participating in the proceeding and the addresses and phone numbers of the parties or their attorneys.

6. Provide direction on how to contact the court to participate telephonically in the proceedings.

F. Documentation of Notice: All contacts and attempts to contact the NATION shall be documented in the DCFS case file.

VI. INTERVENTION

A. A delay in moving to intervene may occur if insufficient information has been provided to the NATION to verify membership, eligibility for membership, or status of a child or parent(s). Pursuant to 25 U.S.C. § 1911(c), the NATION may seek to intervene at any point in a child custody proceeding.

B. If the NATION declines or fails to intervene in a particular case, DCFS shall continue to inform the NATION about the state court proceeding involving the child by providing the NATION with notice of all hearings in that case. With the consent of the court, DCFS shall also provide copies of all motions, orders, petitions, and other pleadings filed with the court.

C. A comprehensive case summary filed with the court and other relevant documents shall be provided to the NATION. DCFS shall notify the NATION immediately after any change in circumstances of the child, reports of abuse or neglect, proposed changes in placement, a parent's completion of requirements for reunification, or changes in the permanency plan for the child.

VII. JURISDICTION AND TRANSFER

A. Exclusive Jurisdiction

1. The NATION shall have exclusive jurisdiction over any "child custody proceeding", involving a Navajo child who resides or is domiciled within the Navajo Nation. Where a Navajo child is a ward of the Navajo Nation family court, the Nation shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the Navajo child.

2. The "Navajo Nation" is defined in the ICWA as all land within the limits of the Navajo Reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation; all dependent Navajo communities within the borders of Utah; all Navajo allotments, the Indian titles to which have not been extinguished, including rights-of-way running through same; and any other lands, title to which is either held by the United States for the benefit of the Navajo Nation or Navajo individuals, or held by the Navajo Nation subject to a restriction by the United States against alienation.

3. When DCFS assumes emergency custody of a child that is subject to the NATION's exclusive jurisdiction, DCFS will notify the NATION within twenty-four (24) hours of taking custody. DCFS will take any steps necessary to insure the safety of the child, including placement in a state foster home, if necessary.

4. When a Navajo Department of Family Services (DFS) office is contacted to take custody of a Navajo child in the exclusive jurisdiction of the NATION but refuses to take custody, DCFS will contact the DFS Department Manager and the Navajo Department of Justice.

   Department of Family Services
   (928) 871-6556

   Human Services and Government Unit
   Navajo Department of Justice
   (928) 871-6935/6936/6275

B. Concurrent Jurisdiction

1. If a Navajo child is not domiciled or residing within the Navajo Nation and is involved in a state court proceeding for foster care placement or termination of parental rights, a petition for transfer of the proceeding to the Navajo Nation family court may be filed in state court and jurisdiction shall be determined in accordance with 25 U.S.C. § 1911(b).

2. On the NATION'S receipt of certified written notice, representatives of DCFS and the NATION will make efforts to arrange a staffing to discuss whether jurisdiction in DCFS or the NATION would be in the best interest of the Navajo child and, if warranted, legal intervention. In the absence of a joint decision, DCFS shall proceed in accordance with Utah law until such time legal intervention and jurisdiction is transferred to the NATION.

3. Where a state court intends to dismiss a child custody proceeding for lack of jurisdiction, DCFS shall notify the NATION before the case is dismissed. In such cases, DCFS shall contact the NATION ICWA Office designated in Section V.C *supra*.

4. When DCFS has legal custody of a Navajo child placed on the Navajo reservation, DCFS social workers will coordinate with the NATION to enter the Navajo reservation when necessary. When the NATION has legal custody of a Navajo child placed off the Navajo reservation, NATION social workers will provide appropriate social services to that child and his/her family.

5. Arrangements may also be made in other individual cases to provide social services on or off the Navajo reservation by DCFS and the NATION as coordinated amongst the appropriate offices and in the best interests of the child and/or family being served.

6. DCFS and the NATION may request the assistance of the appropriate law enforcement agencies when necessary.

C. Transfer

1. The NATION agrees to make reasonable efforts to file a motion to transfer jurisdiction in state child custody proceedings involving a Navajo child. A delay in moving to transfer may occur if the information as requested concerning membership of a child or parent(s) has not been provided to the NATION. Notwithstanding any other provisions of this Agreement, the NATION may seek to transfer at any point in the proceeding, pursuant to 25 U.S.C. § 1911.

2. It shall be the policy of DCFS that a petition to transfer by the NATION will be favored whenever permitted by the ICWA. It shall be the policy of the NATION to request transfer only upon a determination that such transfer is in the best interests of the Navajo child and family. DCFS and the NATION

agree to work cooperatively in all child custody proceedings to protect the best interests of the Navajo child and his/her family.

3. Nothing in this Agreement shall limit the rights of the NATION and DCFS in a hearing upon a petition to transfer the proceedings to a Navajo Nation Family Court pursuant to 25 U.S.C. § 1911(b). Any attempts to deny transfer for good cause will conform to the provisions of 25 CFR § 23.118.

4. Upon the Utah Juvenile Court's Determination to transfer jurisdiction the Navajo Nation's Children's Court, the Navajo Nation shall provide documentation to DCFS of the Court's acceptance of the transfer of jurisdiction. DCFS shall close the file and provide timely copies of the case file to the Navajo Nation.

VIII. CHILD PROTECTIVE SERVICES

A. DCFS shall be primarily responsible for receiving and investigating reports of suspected child abuse or neglect concerning Navajo children who are alleged to be abused and neglected off the Navajo Nation.

B. Upon receiving a report of suspected child abuse or neglect, DCFS shall take immediate steps to investigate the report and insure the safety of the child even though there may be a question as to whether the child resides on or off the Navajo Nation or whether the child is Navajo or non-Navajo.

1. If a Navajo child is taken into protective custody, DCFS will telephonically notify the NATION'S ICWA office, followed up with formal notification. DCFS will give oral and written notification within twenty-four (24) hours (excluding weekends and holidays) of taking custody.

2. The NATION will make arrangements to assume custody of the Navajo child who is a resident or domiciliary of the Navajo Nation.

C. The NATION's Division of Social Services, Department of Family Services shall be primarily responsible for receiving and investigating reports of suspected child abuse or neglect concerning children who reside or are located within the Navajo Nation.

1. If the NATION receives a referral for child protective services concerning a non-Indian child who is found within the Navajo Nation, the NATION shall take whatever action is necessary to insure the immediate safety of the child.

2. The case will then be referred by telephone to the appropriate region intake office with written confirmation to follow within twenty-four (24) hours (excluding weekends and holidays).

D. DCFS will be responsible for the cost of custodial care for non-Indian children. The NATION will be responsible for the cost of custodial care for Indian children residing on the Navajo Nation. If a Navajo child resides and is domiciled off the Navajo Nation and the Navajo child is in the custody of DCFS, DCFS shall be responsible for that Navajo child, including payment for shelter care.

E. Primary responsibility for following up on treatment and services to the non-Indian child and his/her family will lie with the appropriate DCFS office, unless representatives of the NATION and DCFS mutually agree upon other arrangements at a staffing held within thirty (30) days after DCFS' receipt of written confirmation.

F. If a Navajo child is taken into DCFS protective custody during normal working hours and DCFS has determined that the child should be released to his/her family, DCFS may release the Navajo child to his/her family in less than twenty-four (24) hours provided that DCFS has complied with state law, and has conferred with or made reasonable efforts to confer with the NATION ICWA Office designated in Section V.C *supra*, to determine whether there is an open case concerning that child. The NATION will notify DCFS, if they do not want the Navajo child released to his/her family.

IX. REMEDIAL SERVICES

A. As soon as DCFS becomes aware that a Navajo child, parent(s), or Indian custodian is in need of services to make it possible for the child to safely remain in or return to the home, DCFS shall make active efforts to prevent the removal of the child. Active efforts to provide remedial services should be to the same extent that services are available to non-Indian families when eligible.

B. Active Efforts

1. Active efforts must involve assisting the parent or parents or Indian custodian through the steps in the case plan and with accessing or developing resources necessary to satisfy the case plan. To the maximum extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Navajo child and should be conducted in partnership with the NATION and the Navajo child's parent(s), extended family members, and Indian custodian. Active efforts are to be tailored to the facts and circumstances of the case and may include:

a. Conducting a comprehensive assessment of the circumstances of the Navajo child's family, with focus on safe reunification as the most desirable goal;
b. Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining services;

c. Identifying, notifying and inviting representatives of the NATION to participate in providing support and services to the Navajo child's family and in family team meetings, permanency planning and resolution of placement issues;
d. Conducting or causing to be conducted a diligent search for the Navajo child's extended family members, and contacting and consulting with extended family members to provide family structure and support of the Navajo child and his/her parent(s);
e. Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the NATION;
f. Taking steps to keep siblings together whenever possible;
g. Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits for the Navajo child during any period of removal consistent with the need to ensure the health safety and welfare of the Navajo child;
h. Identifying community resources including housing, financial, transportation, mental health, substance abuse and peer support services and actively assisting the Navajo child's parents or, when appropriate the Navajo child's family, in utilizing and accessing these resources;
i. Monitoring progress and participation in services;
j. Considering alternative ways to address the needs of the Navajo child's parents and, where appropriate, the family, if optimum services do not exist or are not available.

X. PLACEMENT

A. DCFS and the NATION shall coordinate efforts in locating the most suitable placement for a Navajo child in the custody of DCFS consistent with 25 U.S.C. § 1915; 25 CFR §§ 23.130, 23.131; and this Agreement.

B. Preferences

1. Adoption: Pursuant to 25 U.S.C. § 1915 (a)and in the absence of good cause to the contrary, preference in adoption placement of a Navajo child shall be given in the following order:

a. A member of the Navajo child's extended family.
b. Other members of the NATION.
c. Other adoptive family approved by the NATION.

2. Foster or pre-adoptive: In the absence of good cause to the contrary, upon a judicial finding that a Navajo child is a neglected and/or abused child, DCFS shall recommend one of the following dispositions, listed in order of priority:

a. Permit the Navajo child to remain with his or her parent(s), guardian, or custodian.
b. Place the Navajo child with an extended family member.
c. Place the Navajo child in a foster home that has been licensed or designated by the NATION, if a suitable home is available that is within reasonable proximity to the parent(s).

d. Place the Navajo child in an Indian foster home that has been licensed by DCFS, if a suitable home is available that is within reasonable proximity to the parent(s).

e. Place the Navajo child in a residential facility approved by the NATION.

f. Place the Navajo child in a foster home approved by DCFS.

C. DCFS need not comply with the Interstate Compact for the Placement of Children ("ICPC") to complete a placement on the Navajo reservation in New Mexico or Arizona. DCFS and the NATION will consult to determine whether to complete the placement through ICPC or not through ICPC.

1. The NATION will provide monitoring visits of the placement and provide reports to DCFS, as requested.

2. DCFS will contact the NATION to enter the reservation to make contact with the identified placement, when necessary.

D. DCFS shall consider the NATION'S customs and laws regarding custody and placement of Navajo children in DCFS custody. DCFS shall refer questions of Navajo custom and law to the NATION.

E. In any proceeding in which DCFS is unable to comply with the placement preferences established by this Agreement, the DCFS social worker assigned to the case shall send a report explaining the active efforts made to comply with 25 U.S.C. § 1915. DCFS shall contact the NATION within five (5) days (excluding weekends and holidays) of the placement. The Nation may request that DCFS re-evaluate its placement decision.

F. DCFS shall place a Navajo child in need of foster care or pre-adoptive placement:

1. In the least restrictive setting that most approximates a family setting and meets the child's special needs.
2. Within reasonable proximity to his/her home, taking into account any special needs of the child.
3. Place siblings together whenever possible when it is in the siblings' best interests. If it is not possible to place siblings together, DCFS shall make

active efforts to assure continuing contact among siblings, except if continuing contact compromises, the safety of one or more of the children.

G. All foster homes must meet Title IV-E licensing standards. The state shall recognize foster homes within or outside Navajo Indian Country which are certified, approved, or licensed by the NATION as meeting the foster home licensing requirements under state law. The NATION shall recognize state foster homes which are certified, approved, or licensed by the state as meeting the foster home licensing requirements of the NATION.

H. The state may place Navajo children in foster homes licensed by the NATION and the NATION may place Navajo children in foster homes licensed by the state, if the state and the NATION mutually agree upon such placement. Upon request, the NATION may allow the state to do home studies and certifications on possible foster or pre-adoptive homes within Navajo Indian Country and submit them to the Navajo Nation.

I. Upon receiving custody of a Navajo child, the state shall assume responsibility for all costs of foster care (in either a foster home licensed by the NATION or by the state), supervision, and social services. When jurisdiction of the matter is transferred to the NATION, the NATION and the state shall meet in order to determine which social services shall be paid for by the NATION and which social services shall continue to be paid by the state. For Title IV-E eligible children, the social services shall continue to be paid for by the state to the same extent that the state would pay for services for other citizens of the state of Utah.

J. The NATION agrees that, if it is necessary for a Navajo child in the legal custody of DCFS to be removed from the foster home licensed by the NATION or located on the Navajo Nation because the child is at imminent risk of danger, a state or tribal court has ordered transfer, and/or DCFS and the NATION have determined it is in the child's best interests after a staffing, the NATION will assist in removing a Navajo child from the Navajo Nation and transferring physical custody of the child to DCFS.

K. DCFS agrees that if it is necessary for a child in the legal custody of the NATION to be removed from a foster home licensed by DCFS because the child is at imminent risk of danger, a state or tribal court has ordered transfer, and/or DCFS and the NATION have determined it is in the child's best interests after a staffing, DCFS will assist in removing the child from the foster home and transferring physical custody of the child to the NATION.

L. The supervision of the placement of a Navajo child by DCFS in a foster home licensed by the NATION shall be a cooperative agreement between DCFS and the NATION. Any change in such placement shall be staffed and coordinated between DCFS and the NATION'S assigned worker.

M. The supervision of the placement of a Navajo child by the NATION in a foster home licensed by DCFS shall be a cooperative agreement between the NATION and DCFS. Any change in such placement shall be staffed and coordinated between the NATION and DCFS.

N. The NATION shall notify DCFS within two working days from the time the NATION becomes aware of any emergency situation involving the care or well-being of a Navajo child placed by DCFS in a foster home licensed by the NATION. The NATION shall notify the region director or region associate director of the appropriate DCFS office. The NATION shall take whatever steps are necessary to insure the well-being of the child until DCFS can respond to the emergency situation.

O. DCFS shall notify the NATION within two working days from the time DCFS becomes aware of any emergency situation involving the care or well-being of a Navajo child placed by the NATION in a foster home licensed by DCFS. DCFS shall notify the NATION'S appropriate social service's office. DCFS shall take whatever steps are necessary to insure the well-being of the Navajo child until the NATION can respond to the emergency situation.

P. Good cause to depart from the placement preferences cannot be based on the socioeconomic status of one placement to the other or due to ordinary bonding with a non-preferred placement that was made in violation of the ICWA, 25 CFR § 23.132.

XI. ADOPTIVE PLACEMENTS –Voluntary and Involuntary

A. If a Navajo child is involved in an independent adoption proceeding in which DCFS is involved in any manner, DCFS shall oppose waiver of the ICWA placement preferences, absent good cause to the contrary. DCFS shall immediately notify the NATION when it becomes aware of any independent adoption involving a Navajo child, whether or not DCFS is a party to the adoption proceeding. In the event DCFS becomes aware of a private independent adoption of a Navajo child, they will notify the adoption agency of the ICWA requirements.

B. The NATION shall, with authorization of the applicants, provide DCFS with the names and home studies of prospective adoptive homes in order to assist DCFS in complying with the placement preferences established in this Agreement and 25 U.S.C. § 1915, and those of Navajo custom. DCFS may conduct home studies of prospective adoptive homes of tribal members. The NATION shall assist in the assessment process, which may include conducting a home study. In the event the NATION is unable to conduct a home study, the NATION may request assistance from DCFS.

C. In cases where DCFS is the child placing agency, and its consent is required pursuant to the Adoption Act, DCFS shall review all documents served on it to determine whether a Navajo child is involved. If a Navajo child is involved:

1. DCFS shall require that petitioners provide proof of efforts to notify the NATION of the adoption.

2. If petitioners do not provide proof of efforts to notify the NATION, DCFS shall notify the court that proof of notice to the NATION has not been provided.

3. If information from petitioners is insufficient to determine whether a Navajo child is involved, DCFS shall request additional information from petitioners. If petitioners fail to provide additional information and DCFS continues to have reason to believe that a Navajo child is involved and that petitioners have not complied with the requirements of the ICWA, DCFS shall notify the court of these facts.

XII. VOLUNTARY PROCEEDINGS

Voluntary consents to foster care and relinquishments of parental rights by any parent(s) or Indian custodian shall be taken in accordance with 25 U.S.C. § 1913 and 25 CFR § 23.124.

XIII. RECORD KEEPING

DCFS shall maintain a record of every voluntary and involuntary foster care, pre-adoptive, and adoptive placement of a Navajo child according to 25 CFR §§ 23.140 and 23.141.

XIV. DCFS STAFF TRAINING

A. DCFS shall include training on the ICWA and this Agreement as part of DCFS's staff training plan. DCFS further agrees to provide the ICWA and Indian cultural awareness training for DCFS employees statewide on a regular basis, preferably annually.

B. The NATION shall provide cultural training to DCFS staff, when requested.

XV. CHANGES AND CANCELLATION OF AGREEMENT

A. Either party may cancel this Agreement at any time after one hundred eighty (180) days written notice of the intent to cancel, provided that, before cancellation of the Agreement, the parties agree to make good faith efforts to discuss, renegotiate, and modify the Agreement. Cancellation shall not affect any action or proceeding over which a court has already assumed jurisdiction.

B. In the event any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, that holding shall not invalidate or render unenforceable any other provision of this Agreement.

XVI. EFFECTIVE DATE

This Agreement shall become effective upon the date all necessary signatures to this Agreement are obtained.

XVII. EFFECT OF PRIOR AGREEMENTS

This Agreement supersedes all prior written and oral agreements, covenants, and understanding between DCFS and/or its agency offices and the NATION concerning the subject matter described herein. However, any separate agreement the parties have executed concerning foster care maintenance and/or adoption assistance payments remains in full force and effect. For purposes of this Agreement, the individual signing on behalf of a party certifies that they have authority to act on behalf of the party.

XVIII. SOVEREIGN IMMUNITY

Nothing herein shall be construed as a waiver of the NATION's or the State of Utah's sovereign immunity.

IN WITNESS WHEREOF, THE PARTIES HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT BETWEEN THE STATE OF UTAH, DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILD AND FAMILY SERVICES AND THE NAVAJO NATION.

Approved by the Navajo Nation

02/04/2019

Jonathan Nez, President — Date: 02.04.19

Executive Director
Division of Social Services — Date: 2/28/19

Approved by the State of Utah

Governor Gary Herbert — Date: 2/4/19

Approved by the Department of Human Services

Ann Silverberg Williamson, DHS Executive Director — Date: 2/4/19

Approved by the Division of Child and Family Services

Diane Moore, DCFS Director — Date: 2-4-19

Reviewed for Legal Sufficiency

Carol Verdoia , Assistant Utah Attorney General — Date: 2-4-19

Ethel B. Branch, Navajo Nation Attorney General — Date

Approved by the Department of Finance and Administration

State Contracts Officer — Date

NAVAJO NATION

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5/23/2019

NNC 2019 Session

04:59:39 PM

Amd# to Amd#	Legislation 0102-19: Approving and Authorizing the Indian Child Welfare Act Intergovernmental Agreement Between the State of..	PASSED
MOT Brown		
SEC Freeland, M		

Yea : 19 **Nay : 0** **Excused : 2** **Not Voting : 2**

Yea : 19

Begay, E	Charles-Newton	Smith	Walker, T
Begay, K	Crotty	Tso	Wauneka, E
Begay, P	Daniels	Tso, C	Yazzie
BeGaye, N	Freeland, M	Tso, D	Yellowhair
Brown	Halona, P	Tso, E	

Nay : 0

Excused : 2

Nez, R	Stewart, W

Not Voting : 2

Henio, J	James, V

Presiding Speaker: Damon