

Indian Child Welfare Act Intergovernmental  
Agreement Between the New Mexico Children,  
Youth and Families Department and the Navajo  
Nation Division of Social Services.

## 2018 AMENDMENTS

**TITLE:** Indian Child Welfare Act Intergovernmental Agreement Between the New Mexico Children, Youth and Families Department and the Navajo Nation Division of Social Services.

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### INDIAN CHILD WELFARE ACT INTERGOVERNMENTAL AGREEMENT BETWEEN THE NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT AND THE NAVAJO NATION DIVISION OF SOCIAL SERVICES.

This Intergovernmental Agreement (IGA) is between the STATE OF NEW MEXICO acting through its Children, Youth and Families Department (hereinafter "CYFD"), 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 (hereafter ICWA), Public Law 95-608, codified as 25 USC §§ 1901-1963, "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families," 25 USC § 1901.
- B. The ICWA authorizes Indian tribes and states to enter into Agreements aimed at furthering the purposes of the ICWA (25 USC § 1919).
- C. The State of New Mexico may enter into Cooperative Agreements with tribes as provided in the New Mexico Joint Powers Act and the New Mexico Children's Code (NMSA 32A-1 et seq.).
- 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, effective December 12, 2016.
- E. Pursuant to these laws, the NATION and CYFD hereby enter into this Agreement, subject to the terms and conditions set out below.

#### **II. PURPOSE AND POLICY**

- A. CYFD and the NATION recognize that:
  - 1. There is no resource that is more vital to the continued existence and integrity of the NATION than its children.
  - 2. The United States has a direct interest, as trustee, in protecting Indian children who are members of or eligible for membership in an Indian tribe.
  - 3. CYFD has a direct interest in protecting Native American culture and encouraging the cultural diversity of the citizens of the State of New Mexico.
  - 4. This Agreement is entered into under 25 USC § 1919 and the New Mexico Children's Code (herein "NMCC") (NMSA 32A-1 et seq.), and is predicated on a government to government relationship between the STATE OF NEW MEXICO and the NAVAJO NATION in a spirit of cooperation, coordination, communication, collaboration and good will.
  - 5. Both voluntary and involuntary proceedings are of critical interest to the NATION to:

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- a. Prevent any inappropriate cultural separation of Navajo children from their families and their Navajo community;
  - b. Ensure that Navajo children who are removed from their homes maintain contact with their Navajo culture; and
  - c. Ensure that the values of Navajo culture are preserved.
- B. CYFD and the NATION agree that:
1. The primary purpose of this Agreement is to protect and further the best interests of the Navajo child and his/her family.
  2. The health, care, safety, well-being and supervision of the Navajo child are the primary concerns when providing services to a family; and
  3. Where possible, the child will be raised within his/her family and the Navajo culture.
- C. In fulfilling the terms of this Agreement, CYFD and the NATION support and will act in accordance with the full faith and credit provisions contained in 25 USC § 1911(d). The ICWA requires that the United States, the State and Indian tribes 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. CYFD and the NATION support the policy of 25 USC § 1911 to transfer state court proceedings for foster care placement or the termination of parental rights of Navajo children not domiciled or residing within the Navajo reservation to the jurisdiction of the Navajo Nation upon petition of the NATION or the Navajo child's parent(s) or Indian custodian, absent good cause to the contrary or objections by either parent.
- E. This agreement shall be construed in the spirit of cooperation and in a manner that protects and promotes the best interest of Navajo children and the security of the Navajo tribe and families in accordance with the BIA Regulations.
- F. This Agreement shall be interpreted in a manner that reflects the values of Navajo culture, custom and tradition.

### III. DEFINITIONS

- 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 Section IX, below).
- B. "Child Custody Proceeding" means and includes any action, other than an emergency proceeding, that may culminate in one of the following outcomes: (1) foster care placement, is any action removing a Navajo child from his/her parent(s)

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or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent(s) or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated; (2) termination of parental rights, in any action resulting in the termination of the parent-child relationship; (3) preadoptive placement is the temporary placement of a Navajo child in a foster home or institution after the termination of parental rights but prior to or in lieu of adoptive placement; (4) adoptive placement is the permanent placement of a Navajo child for adoption, including any action resulting in a final decree of adoption.

- C. “Concurrent jurisdiction” exists when the state court and the Navajo Nation both have jurisdiction over a child custody proceeding.
- D. “Continued Custody: means physical custody or legal custody or both, under any applicable Navajo law or custom, or State law. A party may demonstrate the existence of custody by looking to Navajo law or custom, or State law.
- E. “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, timelines, goals and appropriate reporting and follow up.
- F. “Disrupted adoption” means an adoptive placement that ends prior to finalization.
- G. “Dissolved adoption” means a finalized adoption where parental rights have been subsequently terminated or voluntarily relinquished.
- H. “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 for a parent(s) 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 a Navajo child, the domicile of the Navajo child’s parent(s) or Indian custodian or guardian. In the case of a Navajo child whose parent(s) are not married to each other, the domicile of the Navajo child’s custodial parent.
- I. “Emergency Proceeding” means and includes any court action that involves an emergency or emergency placement of a Navajo child.
- J. “Extended Family” means the minor’s grandparent, aunt or uncle, second cousins, stepparent, godparent or Navajo clan member.
- K. “Indian child” means any unmarried person who is under the age of eighteen (18) 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.

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- L. “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.
- M. “Intervention in a judicial proceeding” occurs when the NATION intervenes in a State court child custody proceeding pursuant to 25 USC§ 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 ICWA.
- N. “Involuntary Proceeding” means any child custody proceeding in which the parent(s) does not consent of his/her free will to the foster care, pre-adoptive or adoptive placement or termination of parental rights or in which the parent(s) consents to the foster care, pre-adoptive or adoptive placement under the threat of removal of the child by a State court or agency.
- O. “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, 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.
- P. “Navajo Nation Family Court” means the court of the Navajo Nation vested with authority over child custody proceedings on the Navajo Nation.
- Q. “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.
- R. “Provisional License” means is a license issued by CYFD to a relative or fictive kin upon satisfactory completion of the relative initial assessment. A provisional license may be issued to facilitate or expedite placement of a child with a relative. A provisional license is valid for sixty (60) days, with the possibility of one thirty (30) day extension.
- S. “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 Navajo Nation pursuant to 25 U.S.C. § 1911(b), and the State Court grants the petition.
- T. “Upon Demand” means that the parent(s) or Indian custodian can regain custody simply upon verbal request without any formalities or contingencies.
- U. “Voluntary Proceeding” means a child custody proceeding, such as a proceeding for foster care, pre-adoptive or adoptive placement that either the parent, both parents or an Indian custodian has, of his or her or their free will, without a threat

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of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights.

### IV. GENERAL PROVISIONS

CYFD and the NATION acknowledge that this Agreement binds them and their successors should the duties and responsibilities of CYFD 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 with the NATION and is the biological child of a member of the NATION, herein referred to as “Navajo child.”
- B. Verification of eligibility or membership with the Navajo Nation is the sole responsibility of the NATION. The NATION’s decision regarding this verification shall be conclusive.
  - 1. CYFD shall refer eligibility/membership inquiries to the NATION ICWA Office designated in Section IV.B. for processing. The NATION ICWA Office shall make all applications for enrollment in the Navajo Nation.
  - 2. To process verifications in a timely manner it is essential for CYFD to forward information regarding the child and parent(s), which should include, as available, the name(s) of the parent(s); the 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, if available.
  - 3. If CYFD is not able to provide sufficient information to verify eligibility/membership, the NATION will request additional information from CYFD in writing.
  - 4. When CYFD knows or has reason to know the subject of a child custody proceeding is a Navajo child, CYFD shall treat the case as an ICWA case, until such time the NATION has notified CYFD of the ineligibility of the subject child.
- C. CYFD and the NATION recognize that when a Navajo child is the subject of a child custody proceeding the free flow of information between CYFD and the NATION in relation to the Navajo child is proper, necessary to the administration of the child protective services laws, and is in the best interests of the Navajo child.
  - 1. CYFD will make information, reports and records relating to Navajo children available to the NATION to the extent authorized by the New Mexico Children’s Code, NMSA 32A-4-6 (C) and 32A-4-33(11), CYFD policy and other state and federal confidentiality statutes and administrative rules.
  - 2. The NATION will make information, reports and records relating to Navajo children available to the CYFD to the extent authorized by the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81, et. seq. and any other applicable confidentiality laws and policies.

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3. CYFD and the NATION will share information in any child custody matter where there is a transfer of jurisdiction or cooperative placement efforts.
  4. CYFD and the NATION acknowledge that the disclosure of alcohol or drug abuse treatment records is governed exclusively by federal law.
- D. Protective Services staff of CYFD will testify when necessary in Navajo Nation Family Court upon issuance of a letter from the NATION. Social Services staff of the NATION will testify when necessary in state court upon issuance of a letter requesting appearance by CYFD.
- E. It is mutually agreed that there shall be established a Coordination Committee of representatives of CYFD and the NATION which shall meet quarterly or as needed to address such issues as:
1. Coordination and communication between parties;
  2. 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 or Navajo laws and regulations;
  8. Other issues that may arise as deemed appropriate.
- F. The NATION shall be placed on the CYFD mailing list of proposed rule changes and provided notice of proposed rule changes as provided in CYFD's administrative rules. The NATION and CYFD will update contact information and mailing lists on a periodic basis.
- G. CYFD shall designate a liaison person in CYFD administration who will be the primary point of contact with the NATION regarding CYFD's rules and policies and issues related to implementation of this Agreement. CYFD's liaison may be contacted at:
- Native American Liaison  
Children, Youth and Families Department  
P.O. Drawer 5160  
Santa Fe, New Mexico 87502  
Telephone Number: (505)-827-7612  
FAX Number: (505)-827-4474
- H. 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:



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

- I. The NATION shall be invited to the following CYFD staff meetings concerning a Navajo child: the mandatory meetings pursuant to 32A-4-19 (B) and 32A-4-25.1 (A) and CYFD change of plan staff meetings. CYFD will consider the preference of the NATION when developing, preparing and implementing any permanency plan for a Navajo child.
  - J. Expert Witness
    - 1. On a case-by-case basis, the NATION will provide CYFD with the names of persons qualified to testify as expert witnesses on issues of Navajo customs regarding child rearing, parenting and the role of extended family members raising Navajo children.
    - 2. If expert testimony is required, CYFD will consider the use of one of the experts identified by the NATION, with preference, when appropriate, given to the NATION's social worker or an expert identified by the NATION.
    - 3. The CYFD worker assigned to the child custody matter concerning the Navajo child shall not testify as an ICWA expert.
    - 4. CYFD will conduct witness preparation and provide all documents related to the requested testimony to the expert witness prior to the court hearing.
    - 5. In cases where the NATION has not yet verified enrollment or eligibility, the NATION can provide an expert witness for testimony as needed and when available.
  - K. CYFD shall comply with the terms of this Agreement when the Agreement provides greater protection for the rights and role of the NATION than requirements of CYFD administrative rules, provided there is no violation of applicable laws and administrative rules.
- V. NOTICE**
- A. CYFD must use due diligence to determine whether any child taken into custody is a Navajo child and, if so, CYFD must give notice to the Nation in accordance with 25 USC § 1912.
  - B. CYFD shall notify the NATION, as provided in section IV.C of this Agreement, of any instance where CYFD has received physical custody of or initiated a protective services action regarding a child that CYFD knows or has reason to know is a Navajo child of the following actions known to CYFD:

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1. Involuntary proceedings involving placement, including foster care placement or a change in foster care placement, termination of parental rights proceeding, permanent guardianship and pre-adoptive placement;
  2. Voluntary proceedings involving placement, including foster care placement, pre-adoptive placement, relinquishments, permanent guardianship and consent to termination of parental rights;
  3. Judicial hearings in all proceedings to which the NATION is entitled to notice under (1) and (2) above, and any change in hearing dates and times;
  4. Any disrupted or dissolved adoption of a Navajo child who has been placed from CYFD custody.
- C. CYFD 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. CYFD shall give notice in the circumstances described in Section V.B of a child CYFD knows or has reason to know is a Navajo child as follows:
1. By telephone within twenty-four (24) hours (excluding weekends and holidays) of taking physical custody of the child pursuant to NMSA 1978 32A-4-6, or within twenty (24) hours after subsequently learning that the child is believed to be a Navajo child.
  2. By telephone within twenty-four (24) hours (excluding weekends and holidays) of filing a neglect/abuse or Families In Need of Court Ordered Services petition in State court. Notice shall include information about the scheduled court appearances. In addition, CYFD shall give written notice to the NATION contact office by registered or certified 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 (excluding weekends and holidays).
  3. By telephone of any changes in scheduled hearings as soon as possible, but in any event, no later than twenty-four (24) hours (excluding weekends and holidays) after learning of the change.
  4. By telephone within twenty-four (24) hours (excluding weekends and holidays) of taking custody of a child to extended family members known to CYFD who may be suitable to provide care for the child. In individual cases, the NATION and CYFD may agree that the NATION will assume responsibility for notifying the extended family members.
  5. CYFD shall intervene on referrals that are imminently life threatening and shall notify the NATION within twenty-four (24) hours (excluding weekends and

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holidays) from the time CYFD obtains custody. CYFD will consult with the NATION about alternative placement options.

6. CYFD shall notify the adoption court when CYFD receives notice pursuant to an independent adoption of a child pursuant to 32A-5-6 NMSA 1978.
7. Within five (5) days (excluding weekends and holidays) of CYFD learning of a disrupted or dissolved adoption of a Navajo child placed by CYFD. The NATION shall assist CYFD in identifying and locating the child's parent(s) and extended family members.

E. **Contents of Notice.** The oral and written notices required by this Agreement shall include the information required in the ICWA Notice form approved by the New Mexico Supreme Court, to the extent such information is available upon reasonable inquiry. In addition, the following information shall be provided:

1. A copy of the petition, complaint or other document by which the child custody proceeding was initiated and if a hearing has been scheduled, information on the date, time and location of the hearing;
2. A copy of all pleadings, such as orders, motions and petitions, in the child custody proceeding;
3. Any documentation regarding the child's or the parent(s) Navajo Nation enrollment status, including, if available, a Certificate of Indian Blood;
4. Information about the child's circumstances, including the name, place of birth and date of birth, the basis for the juvenile court's jurisdiction, the date and time of any juvenile court proceeding and the reason for placement;
5. Identification of any special needs; and,
6. Names of all parties participating in the proceeding and the addresses and phone numbers of the parties or their attorneys.
7. Direction on how to participate in the proceedings, i.e. phone, video conference, etc.

F. **Documentation of notice**

All contacts and attempts to contact the NATION shall be documented in CYFD's case file.

## VI. INTERVENTION

The NATION may seek to intervene at any point in the proceeding, pursuant to 25 U.S.C. § 1911(c). CYFD will continue to provide documents to the NATION even when the NATION has not intervened yet.

## VII. JURISDICTION AND TRANSFER

A. **Exclusive Jurisdiction**

1. The NATION shall have exclusive jurisdiction over any "child custody proceeding" as set forth in Section V.B of this Agreement, involving a Navajo child who resides or is domiciled on the Navajo reservation. Where a Navajo

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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. When CYFD assumes emergency custody of a child that is subject to the NATION's exclusive jurisdiction, both the NATION and CYFD will coordinate efforts, including transportation, to have the NATION assume custody of the child.
3. 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, CYFD will contact the DFS Department Manager and the Human Services and Government Unit, Navajo Department of Justice by phone.

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 on the Navajo reservation 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 USC § 1911(b).
2. Upon the NATION's receipt of a certified written notice CYFD and the NATION will make efforts to arrange a staffing to discuss whether jurisdiction in state court or the Navajo Court would be in the best interests of the Navajo child. In the absence of a joint decision, CYFD shall proceed in accordance with the New Mexico Children's Code, Adoptions Act and the ICWA 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, CYFD shall notify the NATION before the case is dismissed. In such cases, CYFD shall contact the NATION ICWA Office designated in Section V.C, *supra*.
4. When CYFD has jurisdiction of a Navajo child placed on the Navajo reservation, CYFD case workers will coordinate efforts with the NATION to enter the Navajo reservation when necessary. When the NATION has jurisdiction of a Navajo child placed off the Navajo reservation, NATION social workers will provide appropriate services to that child and his/her family. Arrangements may also be made in other individual cases to provide services on or off the Navajo reservation by CYFD and the NATION where it is in the child's best interests and his/her family being served.

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5. CYFD and the NATION may request assistance of the appropriate law enforcement agencies when necessary.

### C. Transfer

1. The NATION agrees to make timely efforts to file a motion to transfer jurisdiction in children's court proceedings involving a Navajo child. A delay in moving to transfer may occur if the information as requested concerning membership or eligibility of child or parent(s) has not been provided to the NATION. Notwithstanding any other provision of this Agreement, the NATION may seek to transfer at any point in the proceeding.
2. It shall be the policy of CYFD that a petition to transfer by the NATION will be favored whenever permitted by ICWA and other applicable laws. 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 child and his/her family. CYFD and the NATION agree to work cooperatively in all child custody proceedings to protect the best interests of the child and his/her family.
3. If the NATION declines or fails to transfer in a particular case, CYFD 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, CYFD shall also provide copies of all motions, orders, petitions and other pleadings filed with the court.
  - a. A comprehensive case summary filed with the court and other relevant documents filed as attachments shall be provided to the NATION.
  - b. CYFD shall provide a summary to the NATION immediately after any significant 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. The report prepared by CYFD for a Citizen Review Board review may be used when available.
4. Nothing in this Agreement shall limit the rights of the NATION and CYFD in a hearing upon a petition to transfer the proceedings to a Navajo Nation Family Court pursuant to 25 USC § 1911(b).
5. In determining whether good cause not to transfer exists, CYFD will not consider:
  - a. Whether the foster care or termination of parental rights proceeding is at an advanced stage if the Navajo child's parent, Indian custodian or the NATION did not receive notice of the child custody proceeding until an advantaged stage.
  - b. Whether there have been prior proceedings involving the child for which no petition to transfer was filed.
  - c. Whether transfer could affect the placement of the child.
  - d. The Navajo child's cultural connections with the NATION or its reservation.

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- e. Socioeconomic conditions or any negative perception of NATION social services or judicial systems.

### VIII. CHILD PROTECTIVE SERVICES

- A. CYFD shall have primary responsibility for receiving reports of suspected child abuse or neglect concerning Navajo children domiciled or located off the Navajo reservation.
- B. Upon receiving a report of suspected child abuse or neglect, CYFD shall take immediate steps to ensure the safety of the child even though there may be a question as to whether the child resides on or off the Navajo reservation or whether the child is Navajo. The case will be referred by telephone, with written confirmation following, to the NATION ICWA Office as provided in Section V.C *supra*, within twenty-four (24) hours (excluding weekends and holidays).
- C. The NATION's Division of Social Services, Department of Family Services Offices shall be responsible for assuming custody of the Navajo child who is a resident or domiciled on the Navajo reservation, including making contact with the CYFD office that has assumed emergency custody of the child. [See VII.A.3 for Department of Family Services contact number.]
- D. The NATION's Division of Social Services, Department of Family Services offices shall be primarily responsible for receiving and investigating reports of suspected child abuse or neglect concerning children who are domiciled or are located within the Navajo reservation. If the NATION receives a referral for child protective services concerning a non-Indian child who is located on the Navajo reservation, the NATION shall take whatever action is necessary to ensure the immediate safety of the child.
  - 1. The case will then be referred by telephone, with written confirmation following, to the Statewide Central Intake at **1-855-333-7233 or #SAFE on a cell phone** within twenty-four (24) hours (excluding weekends and holidays).
  - 2. CYFD will be responsible for the cost of custodial care for non-Indian children within the Navajo reservation.
- E. The NATION will be responsible for the cost of custodial care for Indian children residing on the Navajo reservation. If a Navajo child is in the custody of CYFD, CYFD shall be responsible for that Navajo child, including payment for shelter care.
- F. Primary responsibility for follow up treatment and services to the on reservation non-Indian child and his/her family will lie with the appropriate CYFD county office, unless representatives of the NATION and CYFD mutually agree upon other arrangements at a staffing held within thirty (30) days after CYFD's receipt of written confirmation.

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- G. If a Navajo child is taken into CYFD custody during normal working hours and CYFD has determined that the child should be released to his/her family, CYFD may release the Navajo child to his/her family in less than twenty-four (24) hours provided that CYFD 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.
- H. **Emergency Removal**  
Any emergency removal or placement under State law must terminate immediately when the removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.

### IX. REMEDIAL SERVICES – ACTIVE EFFORTS

- A. In a child custody proceeding, active efforts must involve assisting the parent(s) 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, the parent(s) and extended family members.
- B. Whenever possible, CYFD will develop a service plan that is designed to make it possible for the child to be reunited with his/her family.
- C. Active efforts are to be tailored to the facts and circumstances of the case and may include but not be limited to the following:
  - 1. Conducting a comprehensive assessment of the circumstances of the Navajo child's family, with focus on safe reunification as the most desirable goal;
  - 2. Identify appropriate services and helping the parent(s) to overcome barriers, including actively assisting the parent(s) in obtaining services;
  - 3. Identifying, notifying and inviting representatives of the NATION to participate in providing support and services to the child's family and in family team meetings, permanency planning and resolution of placement issues;
  - 4. Conducting or causing to be conducted a diligent search for the child's extended family members, and contacting and consulting with extended family members to provide family structure and support of the Navajo child and the his/her parent(s);
  - 5. Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the NATION;
  - 6. Taking steps to keep siblings together whenever possible;
  - 7. Supporting regular visits with parent(s) or Indian custodian in the most natural setting possible as well as trial home visits for the child during any period of

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removal consistent with the need to ensure the health safety and welfare of the child;

8. Identifying community resources including housing, financial, transportation, mental health, substance abuse and peer support services and actively assisting the child's parent(s) or, when appropriate the child's family, in utilizing and accessing these resources;
9. Monitoring progress and participation in services;
10. Considering alternative ways to address the needs of the child's parent(s) and, where appropriate the family, if optimum services do not exist or are not available.
11. Providing post-reunification services and monitoring.

D. CYFD shall inform and consult with the NATION regarding any significant changes, including disruption or change of placement, significant medical or behavioral issues, reports of abuse or neglect, and runaway incidents.

### X. PLACEMENT

A. CYFD and the NATION shall collaborate efforts in locating the most suitable placement for a Navajo child in the custody of CYFD and be placed in the least restrictive setting which most approximates a family and which his/her special needs are met, if any. Placement shall be consistent with 25 USC § 1915; 25 CFR §§ 23.130 and 23.131; and this Agreement.

#### B. Adoptive Placements

Pursuant to 25 U.S.C. § 1915(a) and NMSA 1978, Section 32A-5-5, in the absence of good cause to the contrary, CYFD will place the child in the following order of preference:

1. Extended family members;
2. Navajo Nation member adoptive parents, which means that one or both adoptive parent(s) must be a Navajo Nation member;
3. Indian adoptive parents, which means that one or both adoptive parent(s) must be an enrolled member of a federally recognized Indian Tribe; or
4. Other adoptive family approved by the NATION.

#### C. Foster Care Placements

In the absence of good cause to the contrary, CYFD will place the child in the following order of preference.

1. Permit the Navajo child to remain with his or her parent(s), guardian or custodian;
2. An extended family member of the child, if a suitable home is available that is within reasonable proximity of the parent(s);



## 2018 AMENDMENTS

3. 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);
4. An Indian foster home that has been licensed by CYFD, if a suitable home is available that is within reasonable proximity to the parent(s).
5. A foster home approved by CYFD that is consented to by the NATION, if a suitable home is within reasonable proximity of the parent(s).
6. An institution for children licensed or designated by CYFD and which is approved by the NATION that has a program suitable to meet the child's special needs.

### D. Pre-Adoptive Placements

In the absence of good cause to the contrary, CYFD will place the child in the following order of preference:

1. A member of the child's extended family.
2. Another family of the NATION.
3. Another Indian family.
4. A non-Indian family approved by the NATION.

### E. Licensing

- a. When seeking a provisional license for a family on the Navajo reservation, CYFD will coordinate efforts with the NATION in completing the provisional license, including and when necessary obtaining permission from the NATION to enter the reservation.
- b. CYFD shall recognize and may place a Navajo child in a foster home certified, approved or licensed by the NATION as meeting the foster home licensing requirements under State law.
- c. The NATION shall recognize and may place a Navajo child in a foster home licensed by CYFD as meeting the foster home requirements of the NATION.

F. CYFD shall consider the Navajo customs and laws when identifying the placement of a Navajo child. CYFD shall refer questions of Navajo custom and laws to the NATION.

G. When CYFD is unable to comply with placement preferences established by this Agreement, the CYFD case worker assigned to the case shall send a report explaining the efforts made to comply with the placement preference requirements. CYFD shall contact the NATION within five (5) days of the placement (excluding weekends and holidays). The NATION can always request that CYFD re-evaluate its placement decision.

H. CYFD shall place siblings together whenever possible. If it is not possible to place siblings together, CYFD shall make active efforts to assure continuing contact among siblings, except if continuing contact compromises the safety of one or more of the children.

## 2018 AMENDMENTS

- I. When extended family members are made known to CYFD, CYFD will make active efforts to place the child with those family members. CYFD will notify the NATION and extended family members designated by the NATION of CYFD's placement assessment and CYFD's decision regarding placement of the child with the extended family members.
- J. The placement preference of the child's parent(s) shall be considered where such preference is appropriate and consistent with ICWA and this Agreement.
- K. To insure that foster care and adoptive homes certified, designated or approved under state and Navajo law provide a safe and nurturing placement for Navajo children, the parties:
  - 1. Agree that all persons who apply to become either a foster care provider or an adoptive resource for a Navajo child, including all adults who reside in the home, shall complete a criminal background check pursuant to CYFD and NATION policy and procedures before a child is placed in that home.
  - 2. Acknowledge that information gathered in the criminal records check may result in CYFD rejecting the proposed foster or adoptive home for good cause pursuant to 25 USC § 1915, 42 USC § 671, Section 471.20.A, i and ii of the Title IV-E; and
  - 3. Acknowledge that information gathered in a criminal records background check is confidential and protected under applicable law. The parties also acknowledge that pursuant to these confidentiality requirements, specific information obtained in a criminal records check cannot be shared between CYFD and the NATION.
- L. Upon taking legal custody of a Navajo child, CYFD shall assume responsibility for all costs of care (in homes licensed by the NATION or CYFD), supervision, and support services, until such time the NATION chooses to transfer jurisdiction. Should that happen the NATION shall assume responsibility for all such costs, subject however, to the emergency shelter care provisions of Section VIII, *supra*.
- M. The NATION agrees that if it is necessary for a Navajo child in the legal custody of CYFD to be removed from the foster home licensed by the NATION or located on the Navajo reservation due to: (1) an order of a State or tribal court, or (2) a determination after a staffing between CYFD and the NATION that removal is in the child's best interest, the NATION will assist in removing the child from that home and transferring physical custody of the child to CYFD.
- N. CYFD 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 CYFD due to: (1) an order of a State or tribal court, or (2) to a determination after a staffing between CYFD and the NATION that removal is in the child's best interest, CYFD will assist in removing

## 2018 AMENDMENTS

the child from the foster home and transferring physical custody of the child to the NATION.

- O. The NATION shall notify CYFD within twenty-four (24) hours (excluding weekends and holidays) from the time the NATION becomes aware of any emergency situation involving the care, safety or well-being of a child placed by CYFD in a foster home licensed by the NATION. Provided, however, that the NATION shall take whatever steps are necessary to insure the safety and well-being of the child until CYFD can assume custody of the child.
- P. CYFD shall notify the NATION within twenty-four (24) hours (excluding weekends and holidays) from the time CYFD becomes aware of any emergency situation involving the care, safety or well-being of a Navajo child placed by CYFD or the NATION in a foster home licensed by CYFD. CYFD shall place the Navajo child in emergency foster care. Provided, however, that CYFD shall take whatever steps are necessary to ensure the safety and well-being of the child until the NATION can assume custody of the child.
- Q. Good Cause to Deviate
  - 1. When CYFD asserts that good cause exists not to follow the placement preferences, CYFD must provide the reasons for that belief or assertion stated orally on the record or provided in writing to the parties to the child-custody proceeding, the court and the NATION.
  - 2. The party seeking to assert good cause bears the burden of proving by clear and convincing evidence that there is good cause to deviate.
  - 3. Considerations on which good cause may be based include:
    - a. The request of one of the Navajo child's parent(s) after they have reviewed the ICWA preferred placement options, if any, that comply with the order of preference.
    - b. The request of the child, if the child is of sufficient age and has the capacity to understand the decision.
    - c. The presence of sibling attachment that can only be maintained through a particular placement.
    - d. The extraordinary physical, mental or emotional needs of the Navajo child.
    - e. The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements that meet the placement preferences, but none has been located.
  - 4. The standards for determining if a suitable placement is unavailable must conform to the prevailing social and cultural standards of the Navajo Nation community.
  - 5. Placement may not depart from the placement preferences based on the socio-economic status of one placement over another or solely on ordinary bonding

## 2018 AMENDMENTS

and attachment that occurred during the time the Navajo child was in a non-preferred placement in violation of the ICWA.

- R. The NATION can concur to a placement that departs from the ICWA preferences when the NATION believes it is in the child's best interest. A concurrence can be rescinded at any time by the NATION. This shall not infringe on the NATION's right to object to any placement.
- S. CYFD does not have to go through the Interstate Compact for the Placement of Children (ICPC) when placing a child on the Navajo reservation, in Arizona or Utah, to complete the placement. CYFD and the NATION will staff together to come to a mutual decision on ICPC, including discussing appropriate financial resources and services.
  - 1. The NATION will provide monitoring visits of the placement and provide reports to CYFD.
  - 2. CYFD will contact the NATION to enter the reservation for home visits of the identified placement, when necessary.

## XI. VOLUNTARY PROCEEDINGS

Voluntary consents to foster care and voluntary relinquishments of parental rights by any parent or Indian custodian shall be taken in accordance with 25 USC § 1913 and 25 CFR § 23.124.

## XII. ADOPTIVE PLACEMENTS – VOLUNTARY AND INVOLUNTARY

- A. CYFD shall review all documents served on CYFD pursuant to the Adoption Act (NMSA 32A-5-1 et seq.) where CYFD consent is required to determine whether a Navajo child is involved. If a Navajo child is involved:
  - 1. CYFD 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, CYFD 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, CYFD shall request additional information from petitioners. If petitioners fail to provide additional information and CYFD continues to have reason to believe that a Navajo child is involved and that petitioners have not complied with the requirements of ICWA, CYFD shall notify the court of these facts. In addition, CYFD shall not waive the ninety (90) day waiting period unless and until it can determine that a Navajo child is not involved.**

## **2018 AMENDMENTS**

### **XIII. CYFD STAFF TRAINING**

CYFD shall include training on ICWA and this Agreement as part of CYFD's Protective Services staff training plan. CYFD further agrees to provide ICWA and Indian cultural awareness training for CYFD protective services employees statewide at initial hire, and bi-annually. CYFD agrees to invite and provide notice of CYFD sponsored training to the NATION office identified in IV.H. The NATION agrees to invite and provide notice of NATION sponsored training to the CYFD office identified in IV.G.

### **XIV. 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 the 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.

### **XV. EFFECTIVE DATE**

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

### **XVI. EFFECT OF PRIOR AGREEMENTS**

This Agreement supersedes all prior written and oral agreements, covenants and understanding between CYFD 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.


### **XVII. SOVEREIGN IMMUNITY**

Nothing herein shall be construed as a waiver of the NATION'S or the STATE OF NEW MEXICO's sovereign immunity.

**2018 AMENDMENTS**

IN WITNESS WHEREOF, THE PARTIES HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT BETWEEN THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT OF THE STATE OF NEW MEXICO AND THE NAVAJO NATION DIVISION OF SOCIAL SERVICES.

**Approved by the Navajo Nation**

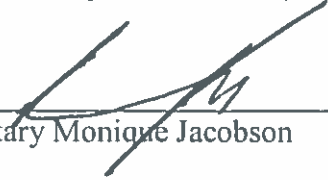
  
\_\_\_\_\_  
Russell Begaye, President

1-14-19  
Date

  
\_\_\_\_\_  
Terrelene Massey, Executive Director  
Navajo Division of Social Services

11/8/18  
Date

**Approved by the Children, Youth and Families Department**

  
\_\_\_\_\_  
Secretary Monique Jacobson

10/29/2018  
Date

**Reviewed for Legal Sufficiency**

  
\_\_\_\_\_  
Amanda Romero  
CYFD Chief General Counsel

10-25-18  
Date

  
\_\_\_\_\_  
Ethel B. Branch  
Navajo Nation Attorney General

1-10-2019  
Date

## NAVAJO NATION COUNCIL

23rd NAVAJO NATION COUNCIL -- Fourth Year, 2018

## AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES, BUDGET AND FINANCE, NAABIK'ÍYÁTI' COMMITTEES AND NAVAJO NATION COUNCIL; APPROVING AND AUTHORIZING THE INDIAN CHILD WELFARE ACT INTERGOVERNMENTAL AGREEMENT BETWEEN THE NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT AND THE NAVAJO NATION 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 New Mexico 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'iyáti' 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).

## SECTION TWO. FINDINGS

- A. The Indian Child Welfare Intergovernmental Agreement between the Navajo Nation's Division of Social Services and the State of New Mexico Children, Youth and Families Department is entered into under 25 U.S.C. § 1919 and the New Mexico Children's Code NMSA 32A-1 et seq. and is predicated on a government to government relationship between the State of New Mexico 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 New Mexico Children, Youth and Families Department 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 New Mexico Children, Youth and Families Department 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 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 14 in favor and 00 opposed, on this 20th day of December 2018.



LoRenzo C. Bates, Speaker  
23rd Navajo Nation Council

12-24-18

Date

Motion: Honorable Alton Joe Shepherd

Second: Honorable Olin Kieyoomia

Speaker LoRenzo C. Bates not voting