



**Navajo Nation and Utah  
Indian Child Welfare Act  
Intergovernmental Agreement**



# Intergovernmental Agreement (IGA)

## Section I-Authority

- This IGA (executed in February 2019) is between the State of Utah through Division of Child and Family Services (DCFS) and the Navajo Nation through its Division for Children and Family Services (Navajo Nation).
- Authority – Pursuant to the following laws, the Navajo Nation and DCFS hereby entered into this IGA, subject to the following terms and conditions.
  - In 1978, the Congress of United States adopted the Indian Child Welfare Act, 25 USC §1901.
  - The ICWA authorizes Indian tribes and states to enter into Agreements aimed at furthering the purposes of the ICWA, 25 USC §1919.
  - The State of Utah may enter into Cooperative Agreements with tribes as provided in the Utah Joint Powers Act.



# Purpose and Policy

## Section II-Purpose and Policy

- ▶ Through the IGA, the Navajo Nation and DCFS agreed to the following:
  - ▶ Establish a government-to-government working relationship to coordinate, communicate, cooperate, and collaborate on all ICWA matters pursuant to ICWA, and BIA regulations.
  - ▶ protect and further the best interests of the Navajo child and his/her family.
  - ▶ Prevent cultural separation of Navajo children from their families and communities.
  - ▶ Ensure Navajo children maintain contact with their Navajo culture.
  - ▶ Ensure the general welfare, including the health, safety, well-being, and supervision of the Navajo child.
  - ▶ Where possible, the child will be raised within his/her family and the Navajo culture.
  - ▶ Agree that the IGA shall be interpreted in a manner that reflects the values of Navajo culture, custom and tradition.



# General Provisions- Section IV

- IGA applies to any unmarried child under the age of 18, who is a member or eligible for membership with the Navajo Nation and is the biological child of a member of the Nation.
- Verification of eligibility or membership with the Navajo Nation is the sole responsibility of the Navajo Nation.
  - Section IV(B) outlines more info. as to what is needed to effectuate the above.
- DCFS and the Navajo Nation recognize that when a Navajo child is the subject of a child custody proceeding, the free flow of information between DCFS and the Navajo Nation in relation of the Navajo child is proper and is in the best interest of the Navajo child.
  - Section IV(C) provides that DCFS and the Navajo Nation will follow its respective laws on privacy disclosure.

# Notices- Section V

- DCFS must use due diligence to determine whether any child taken into custody is a Navajo child and, if so, DCFS must give notice to the Navajo Nation in accordance with 25 USC § 1912 and 25 C.F.R 23.111.
  - Involuntary and Voluntary Proceedings, including foster care placement or change in placement, TPR, permanent guardianship, and pre-adoptive placement.
  - Judicial hearings.
  - Any disrupted pre-adoption/prospective adoption or dissolved adoption.
- Section V(D) outlines the process of what DCFS is required to follow when there is a child custody proceeding involving a Navajo child.
- Section V(E) outlines the process of what DCFS is required to provide to the Navajo Nation related to a child custody proceeding involving a Navajo child.



# Remedial Services – Active Efforts

## Section IX-Active Efforts

- ▶ DCFS shall make active efforts to prevent the removal of the child.
  - ▶ Assisting the parent(s)/custodian(s);
  - ▶ Provided in a manner consistent with the prevailing social and cultural conditions and way of life the Navajo child and family;
  - ▶ Tailored to facts and circumstances of the case;
  - ▶ Conducting assessments with focus on reunification as most desirable goal;
  - ▶ Identify culturally appropriate services and helping family overcome barriers so family is able to actively engage;
  - ▶ Tribal engagement throughout process;
  - ▶ Diligent relative search and search that complies with the Navajo Nation placement preferences;
  - ▶ Maintaining sibling connections;
  - ▶ Identify community resources;

# Placement- Section X

- Adoptive Placements: Section X (B)(1) -Order of Priority
  - Extended family members;
  - Navajo Nation member adoptive parents, which means that one or both adoptive parent(s) must be Navajo Nation member;
  - Indian adoptive parents, which means one or both adoptive parent(s) must be an enrolled member of a federally recognized Indian Tribe; or
  - Other adoptive family approved by the Nation
- Pre-Adoptive Placements/Foster Care placement: Section X (B)(2)-Order of Priority
  - Parents, guardian, or custodian;
  - Member of the child's extended family;
  - Foster home licensed or designated by the Navajo Nation;
  - Indian foster home that has been licensed by DCFS;
  - Residential facility approved by the Navajo Nation;
  - Foster home approved by DCFS.

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## Placement- Section X (D)


### Placement and Navajo customs

- 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.



# Placement- Section X (F)-Needs

- Pre-Adoptive Placements/Foster Care placement: DCFS shall place Navajo child in need of the aforementioned Section X (F)
  - In the least restrictive setting that most approximate a family setting and meets the child's special needs.
  - Within reasonable proximity to his/her home, taking into account any special needs of the child.
  - Place siblings together whenever possible when it is in the sibling's best interest.
    - If it is not possible to place siblings together, CDFC shall make active efforts to assure continuing contact among siblings, except if continuing contact compromises, the safety of one or more of the children.



## **Interstate Compact for the Placement of Children (ICPC)- Section X (C)**

- ▶ DCFS does not have to go through the ICPC when placing a child on the Navajo Nation in New Mexico or Arizona.
- ▶ DCFS and the Navajo Nation will make a mutual decision on ICPC and case staffing's should occur to discuss appropriate financial resources and services.
- ▶ DCFS will contact the Navajo Nation when entering the Navajo Nation to make contact with the identified placement, as necessary.



# General Provisions

## Section IV (D)-Expert Witness

- ▶ On a case-by-case basis, the Navajo Nation will provide DCFS with the names of persons qualified to testify as an expert witness on issues of Navajo customs regarding child rearing, parenting and the role of extended family members raising Navajo children.
- ▶ If expert testimony is required, DCFS will give preference to the expert identified by the Navajo Nation.
- ▶ DCFS social worker assigned or previously assigned to the child custody matter shall not testify as an ICWA expert.



# Jurisdiction and Transfer

## Section VII(A)

- Exclusive Jurisdiction

- The Navajo Nation shall have exclusive jurisdiction over any “child custody proceeding” involving a Navajo child who resides or is domiciled on the Navajo Nation.
  - Where a Navajo child is ward of the Navajo Nation Family Court, the Nation shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the Navajo child.
- When DCFS assumes emergency custody of a child that is subject to the Navajo Nation’s exclusive jurisdiction, DCFS will notify the Navajo Nation within 24 hours of taking custody.



# Jurisdiction and Transfer

## Section VII (B)- Concurrent Jurisdiction


- ▶ If a Navajo child is not domiciled or residing on the Navajo Nation and is involved in a state custody proceeding for foster care placement or TPR, a petition for transfer of the proceedings to the Navajo Nation Family Court may be filed in state court and jurisdiction shall be determined in accordance with 25 USC § 1911(b).
- ▶ Upon the Navajo Nation's receipt of a certified written notice, DCFS and the Navajo 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.
- ▶ Where a state court intends to dismiss a child custody proceeding for lack of jurisdiction, DCFS shall notify the Navajo Nation before the case is dismissed. In such cases, DCFS shall contact the Nation ICWA office.
- ▶ When DCFS has jurisdiction of a Navajo child placed on the Navajo Nation, DCFS case workers will coordinate efforts with the Nation to enter the Navajo Nation when necessary.



# Jurisdiction and Transfer

## Section VII (C)-Transfer

- ▶ The Nation agrees to make reasonable efforts to file a motion to transfer jurisdiction in children's court proceedings involving a Navajo child.
- ▶ It shall be the policy of DCFS that a petition to transfer by the Nation will be favored whenever permitted by ICWA and other applicable laws.
- ▶ Nothing in this Agreement shall limit the rights of the Navajo Nation and DCFS in hearing upon a petition to transfer the proceedings to a NN Court pursuant to 25 USC § 1911(b).



# Jurisdiction and Transfer

## Section VII (C)- Good cause

- ▶ In determining whether good cause not to transfer exists, DCFS and state court will not consider in compliance with 25 CFR § 23.118:
  - ▶ Whether the foster care or termination of parental rights proceedings 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 advanced stage.
  - ▶ Whether there have been prior proceedings involving the child for which no petition to transfer was filed.
  - ▶ Whether transfer could affect the placement of the child.
  - ▶ The Navajo child's cultural connections with the Nation or its reservation.
  - ▶ Socioeconomic condition or any negative perception of Nation social services or judicial systems.