

**MINNESOTA TRIBAL/STATE AGREEMENT**

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## **PART I. INTRODUCTION**

### **A. HISTORY**

From a historical perspective, the majority of federal policies directed at American Indian People provided an experience which was extremely negative. In particular, both Indian tribes and child welfare professionals were critically concerned about the results of federal, as well as state and local child welfare policies in terms of the destruction of Indian families. Prior to 1978, Indian children were being placed in foster care at a nationwide rate 10-20 times that for non-Indian children. These children often lost all connections with their families, extended families, tribes, and cultural heritage.

Public Law 95-608, the federal Indian Child Welfare Act of 1978 (codified at 25 U.S.C. ' ' 1901 *et. seq.*) (ICWA) was passed to remedy this problem of disproportionately large numbers of Indian children being placed in foster care. The law recognized Athat there is no resource . . . more vital to the continued existence and integrity of Indian tribes than their children@ and that there has been a failure by non-Indian agencies Ato recognize the essential tribal relations of Indian people and the culture and social standards prevailing in Indian communities and families.@ (25 U.S.C. ' 1901).

In passing the Indian Child Welfare Act, Congress stated:

It is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operations of child and family service programs.

Minnesota established the above concept as state policy and passed the Minnesota Indian Family Preservation Act (Minn. Stat. ' ' 257.35-257.3579) (MIFPA) in 1985 to strengthen and expand parts of the federal act. The Minnesota law and its amendments emphasize the State=s interest in supporting the preservation of the cultural heritage of Indian children and recognize tribes as powerful resources in doing so.

These two laws apply specifically to the provision of child welfare services to Indian children. Indian children are entitled also to all rights granted other children under any other federal, or state law when those rights are not in conflict with federal law and when the state statute provides greater protection for the preservation of Indian family unity, extended family members, and continued tribal affiliation. The federal Indian Child Welfare Act takes precedence over all state laws and all other federal laws regarding Indian child welfare cases, unless the state law or other federal law provides a higher standard of protection for the rights of

the parent(s) or Indian custodian(s). 25 U.S.C. ' 1921. The goal is to ensure that the Indian children remain with their parents whenever possible. If that is not possible, then placement must be with the extended family, and when that is not possible, then with an Indian custodian of the child=s tribe, and when that is not possible, then with a person of Indian descent.

## **B. PURPOSE**

This Agreement was developed to provide a mechanism for maximizing the participation of tribes in decisions regarding Indian children, especially in the provision of Indian child welfare services in addressing barriers to implementing those services for the protection of Indian families and children and for preventing foster placements and non-Indian adoptions. The Agreement is directed at child welfare activities of the State through it=s local social services systems and attempts to impact the state=s judicial systems. It represents the development of a comprehensive working relationship between all eleven Minnesota tribes and the Minnesota Department of Human Services for the delivery of child welfare services.

This Agreement states the policies and procedures agreed to by both the Tribe(s) and the State and specifies the roles/duties of each in the implementation of child welfare services to Indian families and children. The State agrees to apply the protections of the Agreement to all Indian children in Minnesota who are covered by the Indian Child Welfare Act.

The purpose of this Agreement is to protect the long term best interests of Indian children and families, as defined by the tribes and their social service agencies, by maintaining the integrity of the Indian family, extended family and tribal community ties. The best interests of Indian children are inherently tied to the concept of belonging, which is key to the theme of temporary and permanency planning. Belonging can only be realized for Indian children by recognition and enhancement of the support networks which exist in the child=s extended family, clan, or tribal systems. Permanency develops from identification with these systems through a sense of connectedness and continuity over a period of time.

A primary concept regarding Indian children, which is a belief of most Minnesota Indian people, and has been stated by many other Indian groups and individuals, is that Indian children are the future of Indian tribes, the most important resource that Indian people have. The child is seen as a Asacred being, close to the creator with strong spiritual ties.@

The responsibilities associated with protecting children and their ties to family, extended families, and tribal communities are taken seriously. Tribal input is critical in any decision regarding this important resource.

The trust responsibility of the federal government and the status of tribes as sovereign governments together provide the basis for treating Indian children differently from non-Indian children for child welfare purposes. As a government, tribes have an investment in and the authority to make decisions regarding tribal members and their children.

## **C. LEGAL AUTHORITY**

Pursuant to the sovereign status of tribal governments, in their *parens patriae* capacity, tribes have substantial legal authority to determine the welfare of their members or individuals eligible for membership. In addition, tribes have a compelling interest in promoting and maintaining their political, social, and cultural integrity. Included under the tribe's authority are decisions regarding the type of care received by Indian children who require placement away from the home of their parent(s) or Indian custodian(s). The *parens patriae* interest of tribes includes any placement of Indian children made by the local social services agencies and child placement agencies licensed by DHS.

Pursuant to the laws of the State of Minnesota, the Department of Human Services (hereinafter DHS) has the authority and responsibility to support and strengthen the integrity of families and to protect and contribute to the welfare of children of the State through a comprehensive and coordinated program of public child welfare services. DHS also has the responsibility and authority to ensure that the LSSA and private placement agencies follow applicable federal and state laws, rules, and regulations.

ICWA authorizes the states and Indian tribes to enter into agreements concerning the care and custody of Indian children and jurisdiction over child custody proceedings involving such children. (25 U.S.C. § 1919). The Minnesota Legislature has authorized the Commissioner of Human Services to enter into this Agreement on behalf of the State of Minnesota. The Department of Human Services and the Minnesota Tribes (hereinafter the Atribe(s)@), through their undersigned representatives, hereby enter into the following Agreement to further the national policy, declared in 25 U.S.C. § 1902, to protect the best interest of Indian children and promote the stability and security of Indian tribes and families.

Atribe(s)@ refers to only those tribes, bands, or tribal communities which are a party to this Agreement as indicated by the signature of the tribal representative on the Agreement's signature page.

This Agreement is entered into to strengthen implementation requirements of the ICWA and the Minnesota Indian Family Preservation Act and to ensure that any DHS regulations, directives, policies, or manual instructions are applied consistently with the terms of this Agreement and ICWA.

### **1. JURISDICTION**

The parties acknowledge and agree that tribes, under the ICWA, have exclusive jurisdiction over any child custody proceeding concerning an Indian child who resides or is domiciled within their reservation boundaries, except where concurrent jurisdiction is vested in the state by existing federal law. This means that exclusive jurisdiction for Indian domiciliaries is not wholly dependent on residency within the reservation boundaries. A tribe shall exercise exclusive jurisdiction over wards of tribal court regardless of residency.

In reservations affected by P.L. 280, the state has concurrent jurisdiction over some

Indian child welfare matters that arise on the reservation and involve children resident or domiciled there, unless the tribe has reassumed exclusive jurisdiction over child custody proceedings with regard to children who are residents of or are domiciled on the reservation pursuant to 25 U.S.C. ' 1918.

The parties understand that notification is crucial to a tribe=s exercise of jurisdiction over its children. The parties agree that every effort shall be made to notify the tribe, so that the tribe may participate in a child custody proceeding or may choose to exert its proper jurisdiction over the child.

This Agreement specifically recognizes that the tribes are the sole interpreters of their constitutions and any tribe may grant its tribal court jurisdiction to hear and determine Indian child welfare matters at its discretion. Further, tribes may assert exclusive jurisdiction over such matters as to Indian children domiciled or residing within its reservation boundaries, except where concurrent jurisdiction is otherwise vested in the State by existing federal law.

In any state court proceeding for the foster care placement of, or termination of parental rights to an Indian child not domiciled or residing within the reservation of the Indian child=s tribe, pursuant to 25 U.S.C. ' 1911(b), the court, in the absence of good cause to the contrary, shall transfer such proceedings to the jurisdiction of the tribe, absent objections by either parent, upon petition of either parent or the Indian custodian, or the Indian child=s tribe, provided that the court of such tribe may decline to accept the transfer.

In any state court proceeding, the foster care placement of, or termination of parental rights to an Indian child, the Indian custodian of the child, and the Indian child=s tribe, shall have the right to intervene at any point in the proceeding pursuant to 25 U.S.C. ' 1911(c).

## **2. FULL FAITH AND CREDIT FOR PUBLIC ACTS, RECORDS, AND JUDICIAL PROCEEDINGS OF TRIBES**

The United States, every state, every territory or possession of the United States, and every Indian tribe, shall 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 the public acts, records, and judicial proceedings of any other entity (25 U.S.C. ' 1911(d)).

## **D. INTERPRETATION OF AGREEMENT**

This Agreement shall be liberally construed so as to achieve a result consistent with MIFPA and ICWA and the following preferences:

1. Indian children should be kept with their families;
2. Indian children who must be removed from their homes, should be placed

- within their own families and Indian tribe(s);
3. DHS should defer to tribal recommendations on matters concerning the custody of the tribe=s children as long as the tribal recommendation is consistent with ICWA and MIFPA.

Any ambiguity in this Agreement shall be resolved in favor of a result that is most consistent with these preferences.

The phrase Aand/or@, which is used throughout this Agreement as a conjunction between Adesignated tribal representative@ and Aqualified expert witness@ is not meant in any way to imply that the Adesignated tribal representative@ can be excluded in favor of a Aqualified expert witness.@ The phrase is used solely as a matter of convenience, as there may be times that the Adesignated tribal representative@ and the Aqualified expert witness@ are the same person, and there may be times when both participate.

In calculating timelines under this Agreement, if no specific reference is made to the inclusion or exclusion of holidays and weekends, the following rules will apply: Saturday, Sunday, and holidays shall be excluded for computation when the period of time is less than seven (7) days. When the period of time is seven (7) days or more, Saturdays, Sundays, and holidays shall be included in the computation unless MIFPA dictates otherwise.

#### **E. DEFINITIONS**

The following definitions shall apply to this Agreement unless such application is inconsistent with ICWA or MIFPA.

1. AAcknowledge@ means any action on the part of the unwed father to hold himself out as the biological father of an Indian child. AAcknowledged father@ also means a father as defined by tribal law or custom.
2. AAdoptive Placement@ means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.
3. AAgreement Compliance Contact@ means a person designated by a tribe and a person designated by DHS to represent their respective entities as a liaison between the tribe and DHS in the implementation of this Agreement.
4. AActive Efforts@ means active, thorough, careful, and culturally appropriate efforts by the LSSA to fulfill its obligations under ICWA, MIFPA, and the DHS Social Services Manual to prevent placement of an Indian child and at the earliest possible time to return the child to the child=s family once placement has occurred. (25 U.S.C ' 1912(d)).
5. ABest Interests of the Indian Child@ means implementation of the policies and placement preferences set forth in the ICWA. Meeting the best interests of the Indian child requires recognition of the importance of maintaining connections with family, siblings, extended family, the tribe, and the child=s cultural heritage, and requires knowledge and



understanding of the damage caused by loss of identity for Indian children. (25 U.S.C. ' 1902).

6. ACase Plan@ means a written plan outlining the requirements set forth in the Indian Child Welfare Procedures Manual (SSM, Chapter 3500 American Indian Children) including but not limited to: activities of the LSSA to eliminate risk of imminent physical harm to a child, documentation of the LSSA=s active efforts to alleviate crisis and prevent placement, family activities and responsibilities and plans to reunify the child and family.
7. AChild Custody/Placement Proceeding@ means foster placement, termination of parental rights, pre-adoptive placement, adoptive placement, or transfer of legal custody to a member of the Indian child=s extended family.

Such term or terms shall not include a placement based upon an act which, if committed by an adult would be deemed a crime, or upon an award in a divorce proceedings of custody to one of the parents. However, as set forth in ICWA, the term or terms do apply to all other domestic relations proceedings in which an Indian child is the subject of a child custody proceeding as defined in ICWA including but not limited to the transfer of legal custody of an Indian child to a member of the child=s extended family.

8. AData@ means all records, files, (including microfilm or computer files), case notes, and all other information regarding an Indian child regardless of whether such files containing the information are open or closed.
9. ADepartment of Human Services@ (ADHS@) means the state agency with ultimate responsibility for the provision of state child welfare services which has met the compliance requirements under P.L 96-272 and received certification by the federal government.
10. ADesignated Tribal Representative@ means an individual designated in writing by the Indian child=s tribe to represent the tribe in child custody proceedings.
11. ADomicile@ means a person=s true, permanent home, or the place to which he/she intends to return even though actually residing elsewhere; a child=s domicile is determined by the domicile of his/her parent(s), even if the child has never resided at the parent(s)= domicile. ADomicile@ is not necessarily synonymous with Aresidence@, and one can reside in one place but be domiciled in another. For adults, domicile is established by physical presence in a place in connection with a certain state of mind concerning one=s intent to remain there. Since most minors are legally incapable of forming the requisite intent to establish a domicile, their domicile is determined by that of the custodial parent. On occasion a child=s domicile will be in a place where the child has never been. (Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989)).
12. AEmergency@ means a condition caused by the action or inaction by an Indian child=s parent or Indian custodian that puts the child at risk of imminent physical damage or harm. The emergency only exists while there is an immediate risk, and once that passes,

the emergency no longer exists.

13. Extended Family shall be defined by the law or custom of the Indian child's tribe or in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or step-parent. (25 U.S.C. ' 1903(2)).
14. Foster Placement means any and all initial and subsequent actions involving the removal of an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where the parental rights have not been terminated.
15. Good Cause shall have the meaning set forth in the Bureau of Indian Affairs AICWA Guidelines in the Federal Register, Vol. 44, No. 228, Nov. 26, 1979.
16. AICWA means the Indian Child Welfare Act, 25 U.S.C. ' ' 1901-1963.
17. AICWA Compliance Review Team the purpose of the ICWA Compliance Review Team will be to monitor LSSA and private child placing agencies' compliance with ICWA and MIFPA. This team will consist of the Ombudsperson for Indian Families, DHS ICWA Consultant, DHS Data Representative, ICWA Court Monitor, two representatives from the ICWA Advisory Council, one LSSA representative, and one representative from a private child placing agency.
18. AICWA Contact Person means a person(s) designated by a tribe in writing to receive formal notice regarding Indian child custody/placement proceedings.
19. Imminent physical damage or harm means a threat of immediate physical injury; emotional harm to a child is not sufficient.
20. Indian means any person who is a member of any Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in the Alaska Native Claims Settlement Act. (43 U.S.C. ' 1602(g)).
21. Indian Child means any unmarried person who is under age eighteen and is (a) either a member of an Indian tribe or (b) eligible for membership in an Indian tribe. (Minn. Stat. ' 257.351, subd. 6).

A determination by the tribe that a child is a member or eligible for membership in the tribe is conclusive. (This shall not be construed as an amendment of present tribal enrollment policies).

22. Indian Child's Tribe refers to the tribe in which an Indian child is a member or eligible for membership. For an Indian child who is a member of or eligible for

membership in more than one tribe, it shall be that tribe with which the child has more significant contacts. If that tribe does not express an interest in participating in decisions about the child, then any other tribe in which the child is eligible for membership may intervene on behalf of the child.

A decision by the Indian child=s tribe that states the child is a member of said tribe is conclusive. A termination of parental rights does not sever the child=s membership or eligibility for membership in the tribe or other rights as an Indian. (25 U.S.C. ' 1903 (5); Minn. Stat. ' 257.351, subd. 7).

23. AIndian 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. (25 U.S.C. ' 1903(6); Minn. Stat. ' 257.351, subd. 8).
24. AIndian Organization@ means any group, association, partnership, corporation, or other legal entity owned and controlled by Indians, or a majority of whose board members are Indians, and who are recognized by a tribe and surrounding Indian community as a provider of social or child welfare services to Indian families. (25 U.S.C. ' 1903 (7), Minn. Stat. ' 257.351, subd. 8a).
25. AIndian Tribe@ means any Indian tribe, band, nation, or other organized group or community of Indians or such group that was previously recognized or that is seeking such recognition and eligible for the services provided to Indians by the United States, including any Alaska Native village as defined in Section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. ' 1602(c)) as amended. (25 U.S.C. ' 1903(8); Minn. Stat. ' 257.351, subd. 9).
26. ALegal Custody@ means the legally enforceable, duty, responsibility, and authority to provide care and control of a child as interpreted by the Minnesota juvenile court system or tribal court when transferring legal responsibility for care from a parent, Indian custodian, or legal guardian to the LSSA, court services agency, or individual pursuant to a court order.
27. ALocal Social Services Agency@ (ALSSA@) means the local agency under the authority of the county welfare or human services board or county board of commissioners which is responsible for human services.
28. AMIFPA@ means the Minnesota Indian Family Preservation Act. (Minn. Stat. ' ' 257.35-257.3579).
29. AParent@ means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including but not limited to adoptions under tribal law or custom. This definition does not include the unwed father where paternity has not been acknowledged or established. A putative father of an Indian child who has not acknowledged or established paternity of the Indian child is not considered a

Aparent@ under ICWA and is not entitled to protections as a Aparent@ unless paternity has been established. (25 U.S.C. ' 1903(9); Minn. Stat. ' 257.351, subd. 11).

30. APermanency Planning for Indian Children@ means the systematic process of carrying out within a short time, a set of goal oriented activities designed to help children live in families that offer continuity of relationships with nurturing parents or caretakers, and the opportunity to establish lifetime relationships. (Minn. Stat. ' 257.351, subd. 11a.)
31. APre-Adoptive Placement@ means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement.
32. AQualified Expert or Qualified Expert Witness@ is a person who is:
  - a. a member of the Indian child=s tribe, who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices;
  - b. a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standa
  - c. a professional person who has substantial education and experience in the area of his/her specialty and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community.
33. AReservation@ means Indian Country as defined in 18 U.S.C. ' 1151 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. (18 U.S.C. ' 1151; 25 U.S.C. ' 1903(10); Minn. Stat. ' 257.351, subd. 13).
34. AResidence@ means the place where the person currently lives or has established a place of abode; provided that if the law or custom of the Indian child=s tribe defines this term differently then the tribal definition shall control.
35. ASecretary@ means the Secretary of the Interior. (25 U.S.C. ' 1903(11); Minn. Stat. ' 257.351, subd. 14).
36. AState Court@ means any juvenile or family court of the State of Minnesota which has jurisdiction over a child custody proceeding.
37. ATermination of Parental Rights@ (ATPR@) means any actions resulting in the termination of the parent-child relationship, under Minn. Stat. ' 260.221, and includes termination of parental rights as part of a step-parent adoption.
38. ATransfer of Legal Custody to a Member of the Indian Child=s Extended Family@ means the temporary or permanent placement of an Indian child with an extended family member.

39. ATribal Court@ means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. When a tribe designates the tribal court of another tribe to act on its behalf, the term shall also include the tribal court of the other tribe. (25 U.S.C. ' 1903(12)).
40. ATribal Social Services Agency@ means a tribal program or a tribe=s agent however named, with responsibility for provision of social services to Indian families and children. (Minn. Stat. ' 257.351, subd. 16).
41. ATribe With Which The Child Has Significant Contacts@ means any tribe where the Indian child may be eligible for membership; any tribe where a parent, Indian custodian, or extended family member seeking placement is a member or may be eligible for membership; any tribe where the child resides on the tribe=s reservation regardless of membership eligibility; or any other tribe with which the child, or a parent, or an Indian custodian of the child has the more significant contacts. (25 U.S.C. ' 1903 (5)).
42. AVoluntary Foster Placement@ means an out of home foster placement by a social services agency away from the home of the parent, Indian custodian, or legal guardian of an Indian child where a parent may have the child returned upon demand. Voluntary foster placement requires court certification as well as a signed voluntary placement agreement which specifies the child=s legal status and spells out the rights and obligations of the child, parent(s), and agency, including the duty of the agency to return the child upon demand. (Minn. Stat. ' 257.351, subd. 17).
43. AVoluntary Relinquishment@ means the free-will, non-coerced consent of a parent or Indian custodian to permanently give up custody of a child, to have parental rights terminated and then have the child placed for adoption; the consent must be executed in writing and heard before a judge in a court of competent jurisdiction.
44. AWard of Tribal Court@ means an Indian child who is so considered by a tribal court. The ward of a tribal court is not necessarily the same as a Astate ward@ in which a child is free for adoption. An Indian child may be a ward of a tribal court without having parental rights terminated.

**F. SUMMARY OF THE INDIAN CHILD WELFARE ACT**

The basic intent of ICWA is to protect the integrity of Indian tribes through protection of its Indian families; ICWA seeks to prevent the removal of Indian children and placement away from extended family and tribal systems.

ICWA accomplishes this goal by:

1. Requiring that active efforts are made to identify a child=s membership or

- eligibility for membership in any Indian tribe.
2. Recognition of the jurisdiction of tribal courts.
  3. Providing for the dismissal or mandatory transfer of cases where the tribe has exclusive jurisdiction.
  4. Providing for transfer of jurisdiction over Indian child welfare cases to tribal court upon request in all other cases barring good cause to the contrary as defined under the ICWA.
  5. Requiring that states give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings.
  6. Requiring state courts, in the placement of Indian children and in the termination of parental rights of Indian children, to observe the highest standards applicable to prevent the destruction of Indian families. These standards apply to:
    - a. The level of effort required to prevent placement,
    - b. The level of effort required to reunify children with families,
    - c. The level of evidence required in judicial proceedings, and
    - d. The requirement for a qualified expert witness under the ICWA.
  7. Requiring compliance with the order of preference for placement of Indian children as set forth in the ICWA, unless the tribe has adopted a different order of preference.
  8. Requiring that the prevailing social and cultural standards of the local Indian community be applied in placement decisions.
  9. Requiring notice to tribes(s), Indian parent(s), and Indian custodian(s) of state court child custody proceedings.
  10. Providing for the right of the parent(s), Indian custodian(s), and/or tribe(s) of an Indian child to intervene in the state court proceedings.
  11. Providing for court-appointed counsel to represent indigent parent(s), or Indian custodian(s) of an Indian child.
  12. Providing protections for the parent(s) who voluntarily place their child in foster care or terminate parental rights.
  13. Requiring tribal and parental access, in accordance with applicable law, to records maintained by the state.
  14. Recognition of tribal licensing and/or approval of standards for foster homes.
  15. Funding of tribal social services to Indian families and their children.
  16. Providing for a process to invalidate the state court=s action when ICWA has been violated.
  17. Assisting Indian adults who were adopted as children to establish tribal affiliation.

The foregoing seventeen statements are intended to be a summary and restatement of ICWA and are not intended to amend ICWA in any way.

**G. SUMMARY OF THE MINNESOTA INDIAN FAMILY PRESERVATION ACT**

The Minnesota Indian Family Preservation Act (MIFPA) expands on and strengthens the federal ICWA by:

1. Requiring notification of and providing for intervention by tribal social services when an Indian child is at risk of placement.

2. Establishing greater emphasis of identification of an Indian child=s tribe(s) and extended family members for placement purposes.
3. Requiring the provision of prevention services that address the conditions in a child=s home which could lead to placement.
4. Requiring notice and providing for intervention by the tribe(s) in case of voluntary placement.
5. Providing for tribal notice of and the right to participate in administrative reviews of voluntary foster placements.
6. Establishing time limits for the local social services agencies to return an Indian child to its parent(s) or Indian custodian(s) upon receipt of a demand for immediate return.
7. Requiring notice to the tribe(s) and access to agency records when the court finds an Indian child has committed a juvenile status offense.
8. Reinforcing that orders of a tribal court have the same force and effects as orders of state court.
9. Clarifying that financial responsibility for the costs of placement or social services ordered by a tribal court shall be determined by the local social services agency (LSSA), pursuant to Minn. Stat. ' 256G.09.
10. Providing an opportunity for the LSSA to be heard in tribal court hearings.
11. Providing that a copy of a court decree regarding the adoptive placement of an Indian child be provided to the tribe(s).
12. Requiring DHS to provide any information to or for an adopted child, adoptive parent(s), Indian custodian(s) or guardian(s), which may be necessary to establish membership.
13. Requiring that DHS obtain and maintain records on Indian children in residential facilities, including the extent of compliance with placement preferences of the ICWA.
14. Providing grants to tribe(s) and Indian organizations to provide services to Indian children and families, and to implement the Minnesota Indian Family Preservation Act.

The foregoing fourteen statements are intended to be a summary and restatement of MIFPA and are not intended to amend MIFPA in any way.

## **H. LSSA SERVICES IN TRIBAL COURT**

DHS recognizes its responsibility to give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe with regard to Indian child custody proceedings to the same extent that DHS gives full faith and credit to the public acts, records, and judicial proceedings of any other entity (25 U.S.C. ' 1911(d)).

DHS recognizes that, to the extent a child is otherwise eligible for social services under Minnesota law, a tribal court may order a placement through an LSSA, provided that notice and an opportunity to be heard in tribal court is provided to the LSSA as required by Minn. Stat. ' 257.354, subd. 4. This may require the LSSA to provide services in connection with the placement as provided in similar placements by state court.



## **PART II. GENERAL AGREEMENT IMPLEMENTATION PROVISION**

### **A. ICWA ISSUE IDENTIFICATION AND ENFORCEMENT MECHANISMS**

DHS agrees to meet with tribal representatives each year by June 30th to discuss legislative issues and prepare a mutually agreed upon agenda of ICWA and MIFPA provisions that require stronger enforcement mechanisms than are possible to achieve through this Agreement. These mechanisms may include legislative proposals, rule revisions, DHS bulletins or training, and review of Indian foster and adoptive home recruitment efforts and the development of the registry of Indian homes.

Issues to be identified shall be areas of child welfare policies and practice that require additional enforcement mechanisms to strengthen compliance with ICWA and MIFPA. These issues will be prioritized and may be considered for legislative proposals in future legislative sessions. Whenever possible, DHS and the tribe(s) shall cooperate with the LSSAs to identify and resolve the foregoing practice issues.

### **B. PURCHASE OF SERVICES**

As provided by MIFPA, if permitted by law and existing funding allocations, DHS agrees to purchase, at the request of a tribe, child welfare services@ (as defined in 42 U.S.C. ' 625(a)(1)) and social services@ (as defined in 42 U.S.C. ' 1397), by contract from the tribe, Indian organization or any other organization recognized and approved by a tribe as providing culturally appropriate child welfare services to Indian families. In addition, if requested by the tribe, and required by law and permitted by existing funding allocations, DHS also agrees to purchase by contract, from these entities, all other services@ provided by DHS to or on behalf of Indian children and families. This agreement also recognizes the possibility that the State may provide a block grant to a tribe for the provision of culturally appropriate services to Indian children. In compliance with all federal and state laws and regulations governing the utilization of funds provided through purchase of services contracts, the tribe from whom services are purchased, will provide such services to or on behalf of Indian children and families. All of the agreements set forth in the foregoing paragraph are subject to state and federal law and available funding resources.

Purchase of services contracts shall be separately negotiated agreements between DHS and each tribe. These contracts will be renegotiated as specified in the contract. DHS agrees to provide the tribes a timely opportunity to participate in the development of the biennial budget proposals. Budget formulation participation may be limited to matters pertinent to securing funds to finance DHS purchase of services contracts with the tribes. However, DHS will solicit input from the tribes on all issues that are related to securing funds to finance DHS purchase of services contracts with the tribe(s).

Purchase of services contracts will be attached to this Agreement as exhibits. The contracts will not be incorporated as part of this Agreement. Should any provisions of this Agreement and the contracts conflict, the provision of the contracts shall govern, and this Agreement shall be amended by consent of both DHS and the tribes to reflect the provisions set forth in the

contracts.

This Agreement sets minimum standards for Indian child welfare services, and any existing agreements between the tribes and LSSA or other agencies, utilizing a higher standard shall not be affected by this Agreement.

**C. CONTINUING DHS RESPONSIBILITY FOR SERVICES**

In addition to services specifically established for Indian families in this Agreement or otherwise, DHS recognizes the responsibility of the State and LSSAs to make available to Indian families all of the other services available to any other family in the circumstances covered by this Agreement. Existing services must not be reduced because of the availability of services through this Agreement.

**D. AGREEMENT COMPLIANCE CONTACT**

At the time of signing, each party to this Agreement shall designate an Agreement Compliance Contact person for purposes of implementing this Agreement.

The name(s) of the contact person(s) for the tribe(s) or his/her designee(s) will be provided to DHS in writing, and this information will be updated by the tribe(s) upon any change.

A supervisor or his/her designees within the Minnesota Department of Human Services (DHS), or Family and Children=s Services Division, shall be the DHS contact person. DHS shall notify the tribes in writing of the identity of the DHS contact person, and this information will be updated by DHS upon any change.

**E. INDIAN CHILD WELFARE PROCEDURES MANUAL**

Within 120 days after signing this Agreement, DHS and the tribe(s) who have signed this Agreement will develop an Indian Child Welfare Procedures Manual for implementation of the Agreement. This manual will replace the existing American Indian Children section in the DHS Social Services Manual (XIII et.seq.). This manual shall be attached to this Agreement as an exhibit.

**F. CONFIDENTIALITY OF RECORDS/INFORMATION**

Any obligation under this Agreement by DHS to disclose or transmit confidential records, documents, or information to the tribe(s) or to involve the tribe(s) in case planning activities which necessitate disclosure of private or confidential information is strictly conditioned upon:

1. Federal or state laws which require or authorize DHS or the LSSAs to disclose private or confidential information to the tribe(s), it being understood that in order to achieve the purposes of ICWA and MIFPA, a tribe must have access to all data including confidential information regarding an individual with respect to its members; or
2. Entry of an order, by a state, federal, or tribal court with jurisdiction over the parties and

the subject matter, which requires or authorizes DHS to disclose confidential information to tribes.

When an LSSA or private child placing agency determines that an Indian child is in a dependent or other condition that could lead to an out-of-home placement and requires that continued involvement of the agency with the child for a period in excess of 30 days, the agency shall send notice of the condition and of the initial steps taken to remedy it to the Indian child's tribal social service agency within seven days of the determination. Minn. Stat. ' 257.352, subd. 2 (1996). At this time and any subsequent stage of its involvement with an Indian child, the agency shall, upon request, give the tribal social services agency full cooperation including access to all files concerning the child.

#### **G. QUALIFIED EXPERT OR QUALIFIED EXPERT WITNESS**

Where a child's tribe is involved in an Indian child custody/placement proceeding, a qualified expert or qualified expert witness shall be an individual who meets the requirements set forth in Definition number 32 (Qualified Expert Witness). A tribe may utilize the services of a qualified expert or qualified expert witness on a case-by-case basis or through a tribally-approved Qualified Expert List. Each tribe that participates in this Agreement shall maintain a tribally approved list of qualified experts and qualified expert witnesses for that tribe. A tribally-approved qualified expert is not subject to challenge by DHS.

#### **H. APPLICABILITY OF AGREEMENT TO STATE LICENSED CHILD PLACEMENT AGENCIES**

DHS agrees to inform the LSSAs of their responsibility to comply fully with the terms of ICWA and MIFPA, and the Indian Child Welfare Procedures Manual that will be incorporated into the DHS Social Services Manual. DHS also agrees to transmit copies of this Agreement to LSSAs and to provide technical assistance and training to strengthen and increase compliance with ICWA and MIFPA.

Immediately following approval of this Agreement by DHS and the tribe(s), each party shall designate a representative to work together in identifying all provisions of this Agreement to be included in the core child welfare training curriculum. DHS will strongly encourage all LSSA staff to attend such training.

#### **I. ICWA COMPLIANCE REVIEW TEAM**

The purpose of the ICWA Compliance Review Team will be to monitor the LSSA's and private child placing agency's compliance with ICWA and MIFPA. This team will consist of the Ombudsperson for Indian Families, DHS ICWA Consultant, DHS Data Representative, ICWA Court Monitor, two representative(s) from the ICWA Advisory Council, one LSSA representative, and one representative from a private child placing agency.

The Compliance Review Team will meet on a quarterly basis to review and assess incoming non-compliance reports from private agencies, LSSAs and tribal entities. The responsibility of

the Compliance Review Team will be Assessment, Recommendations, Corrective Action Plan Review, Corrective Action Outcomes, Follow-up, and Final Review.

**J. MONITORING/SANCTIONS FOR NON-COMPLIANCE**

1. Staffing

To the extent that funding is available, DHS agrees to establish or maintain one or more positions, which shall be filled by a qualified person with knowledge and experience in Indian culture in Minnesota and Indian child welfare. DHS will include representation from the Indian Child Welfare Advisory Council in the hiring process. The job duties will include assisting in monitoring the courts, LSSAs and private child placement agencies, and monitoring compliance with the requirements of ICWA, MIFPA and this Agreement. Such compliance shall be monitored in a manner which is mutually acceptable to the individuals referred to in Part II, Section D of this Agreement, as the Agreement Compliance Contact. Reports on non-compliance by LSSA=s and private child placement agencies will be filed with DHS and the tribe and monitored by the ICWA Compliance Review Team.

2. Compliance Requirements

Minnesota Statutes section 256E.05 subdivision (4) (1996) defines the responsibility of DHS to establish and maintain a monitoring program that will reduce non-compliance with federal laws and federal regulations by county agencies which might result in federal fiscal sanction.

DHS= Community Services Division or Licensing Division shall issue correction orders defining the violation of the law and requiring a written corrective action plan to respond to the documented violations. Sanctions may be proposed prior to a corrective order or fines.

P.L. 103-432 mandates the State to outline the measures that they will take to assure compliance with the Indian Child Welfare Act. In complying with P.L. 103-432, DHS shall adhere to GOAL V of the TITLE IV-E State Plan, MAINTAIN AND STRENGTHEN COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT@, emphasizing Objective E, numbers 3 and 6.

## Non-Compliance Review Process

Where reports of non-compliance have been made to DHS, the ICWA Compliance Review Team will meet to review the report, assess and recommend a corrective action plan that is responsive to the violation. Reports can be received from any source against any child placing agency including a LSSA, private child placing agency, or tribe. It is the position of DHS and the tribes that good faith efforts should be made by the complainant and the party that is allegedly out of compliance to resolve the situation prior to filing a formal complaint. The process will involve the following procedure:

- A. Complaint Received
  - 1. Documentation Submitted
  - 2. Review alleged violation based on conditions constituting the alleged violation of law or rule
  - 3. Specify law or rule violated

Once a complaint is received the ICWA Compliance Review Team will provide notice of the complaint to the child placing agency alleged to be out of compliance and give that agency an opportunity to present information to the ICWA Compliance Review Team about the alleged violation.

- B. Assessment
  - 1. Evaluation of the incident
  - 2. Determination of the level of seriousness of incident
    - a. Nature
    - b. Chronicity
    - c. Severity of violation
  - 3. Determination of imminent danger to health, safety, or rights of the Indian child or family
- C. Recommendations
  - 1. Corrective Action to violating agency
    - a. Inform DHS Commissioner
    - b. Inform County Commissioner and/or private placing agency=s board
    - c. Inform Tribal Government affected
  - 2. Contents of Corrective Action Plan
    - a. Prioritization of actions relating to violation
    - b. State time limits
    - c. Review of ICWA Compliance Review Team
      - 1. Approve/not approved
      - 2. Revisions

- D. Implementation of Corrective Action
  - 1. Monitor progress of plan
  - 2. Follow-up
  - 3. Review of findings
  - 4. Outcome of Corrective Action Plan
    - a. Inform DHS Commissioner
    - b. Inform County Commissioner
    - c. Inform Tribal Government affected

3. Sanctions

If the ICWA Compliance Review Team finds that an agency has not fulfilled the Corrective Action Plan in the time allowable or has continued the violation of federal laws or regulations, the agency shall be subject to sanctions defined in Minn. Stat. ' 245A.06, subd 3; Minn. Stat. ' 245A.07, subds. 1, 2, 3, and 4; Minn. Rule 9545.0750 to 9545.0830 (Rule 4); and Minn. Rule 9543.0010 to 9543.0150 (Rule 13).

**K. INTER-AGENCY COORDINATION**

The tribes and DHS agree to coordinate with other agencies affected by the terms of the Agreement. Such coordination will include training, on-going consultation, development and negotiation of agreements with other agencies, and other appropriate measures to ensure that this Agreement is understood and effectively implemented. To help ensure coordination, understanding, and implementation of this Agreement, DHS will strongly encourage LSSAs, whose service areas include a tribe or who have at least one child who is a member of a tribe on their caseload, to invite tribal representation on their multidisciplinary child protection team. DHS will provide such encouragement by issuing a bulletin, through correspondence and training, and in the ICWA Procedures Manual informing LSSAs of the importance of including tribal representation on the multidisciplinary child protection team.

**L. TRAINING**

1. DHS/LSSA/Private Agency Staff Training

DHS shall require its state child welfare professional staff and strongly encourage local social service agency staff and private child placement agency staff, who have direct services responsibility with respect to Indian children, to receive child welfare training in a core curriculum and training specific to Indian child welfare, which would include the requirements of ICWA, MIFPA, this Agreement, and the Indian Child Welfare Procedures Manual. Additionally, the Indian Child Welfare Advisory Council and DHS shall jointly develop an annual plan for on-going training.

- A. Indian child welfare services training will include but not be limited to the following areas:
  - 1. Procedures to be followed to implement this Agreement and ICWA
  - 2. Notice requirements

3. Provision of protective services
4. Provision of emergency foster care placement services
5. Legal requirements to complete involuntary foster care placement or
6. Voluntary foster care placement
7. Applicability of placement preference standards
8. Records maintenance
9. Adoption of Indian children
10. Indians in Minnesota and
11. Information on government to government relationship(s), sovereignty issues, P.L. 83-280.

B. At a minimum, the knowledge and understanding required to accurately assess the risk to an Indian child should include, but not be limited to, the impact of the following factors:

1. Bi-cultural continuum -- traditional to assimilated behaviors and responses;
2. Socio-economic context -- must be considered when evaluating care, condition of home;
3. Temporary, situational immobilization of parent caused by excessive fear of federal, state or tribal actions;
4. Parenting skill/support -- effect of inadequate, isolating and involved families who retained strong extended family/tribe support; with social services system; traditional non-physical discipline methods and family/tribe support may be healthier;
5. Presence of parent substitute -- non-biological father figure may be more of a positive influence;
6. Emphasis on experiential learning -- child given freedom to experiment, explore and learn;
7. Support systems -- large extended families and strong clan support system in rural areas may balance isolation factors, lack of telephone, etc.;
8. Other factors may be specific to a particular child's tribal culture or may apply generally.

(CCPS Risk Assessment and the Native American Family, by C. Horejsi and J. Pablo; June 1991).

DHS agrees to notify the tribe of child welfare services training provided by DHS or others for DHS, LSSA staff, and tribal child welfare services staff.

2. Judicial System/Law Enforcement Training

DHS and the tribes agree to develop and offer a cooperative training program to educate judges, lawyers, law enforcement personnel, advocates, guardians ad litem, and probation officers who are involved in Indian child custody proceedings, about the provisions of this Agreement, ICWA, MIFPA, and the special cultural and legal considerations pertinent to such proceedings.

3. Payment for Training

DHS agrees to seek grants and/or reimbursement under Title IV-E, the Child Abuse

Prevention and Treatment Act and other federal programs, for the training specified in this Agreement.

**M. WAIVER/AMENDMENTS**

1. Waiver

A duly designated representative of DHS and a tribe, on a case-by-case basis, may agree in writing to waive any of the provisions of this Agreement. The waiver shall identify the provision to be waived, the case or circumstances to which the waiver is applicable, the reason for the waiver and the duration of the waiver.

Any provision of this Agreement may be waived generally by consensus between DHS and the tribes, without regard to a particular case or circumstance. A general effect waiver of any provision(s) of this Agreement shall take effect upon the date the parties sign a written agreement to the waiver. The waiver may be indefinite or may be for a specified length of time.

2. Amendments

The parties may amend or modify this Agreement and/or procedures manual at any time upon mutual consent of DHS and the tribes. Amendments shall be effective when approved in the same manner as required for approval of the original Agreement, unless the parties provide otherwise. All amendments shall be attached as exhibits to this Agreement.



**N. RESOLUTION OF DISPUTES**

The parties agree that, upon the request of any party, disputes arising under this Agreement shall be submitted for resolution to a committee consisting of a DHS Designee, the Tribe=s Designee, and a third member selected by DHS and the tribes.

A dispute may be referred to the committee only after good faith efforts to resolve the dispute have proven unsuccessful. The decision of the committee shall be binding upon both parties, except that no party shall be bound by any decision, that, in its opinion, would place the party in violation of law, or would be a waiver of sovereignty, nor shall the decision affect in any manner the abilities of either party to utilize the waiver and termination remedies provided for in Part II, Sections M and O of this Agreement.

If a state or federal law is amended, neither the tribe(s) nor DHS will be required to comply with any section of this Agreement that would be out of compliance with, or not required by existing law.

**O. TERMINATION OF AGREEMENT**

This Agreement shall remain in effect until revoked by one of the parties. The termination of the Agreement by the State with a particular tribe or by a tribe shall not invalidate this Agreement as to the other tribes.

This Agreement or any part thereof may be revoked upon 180 days written notice to the other party. The notice shall state the reasons for and the effective date of the revocation.

Prior to notification or revocation, a party considering revocation shall, whenever possible, seek to cooperatively explore with the other party ways in which to avoid revocation.

Prior to the effective date of any revocation, the parties agree to cooperate in assuring the revocation will not unnecessarily result in a break in service or in disruption of the services provided to Indian children and families.

### **PART III. JURISDICTIONAL ISSUES**

#### **A. IDENTIFICATION OF AN INDIAN CHILD**

DHS and the tribes agree that the LSSAs are required under federal and state law to determine whether a child who is at risk of out-of-home placement is an Indian child, and to identify the child's tribe(s). DHS shall provide training and technical assistance to the LSSAs to achieve compliance with procedures set forth in ICWA, MIFPA, and the Indian Child Welfare Procedures Manual.

An Indian Child means any unmarried person who is under age eighteen and is (a) either a member of an Indian tribe or (b) eligible for membership in an Indian tribe. (Minn. Stat. ' 257.351, subd. 6). A determination by the tribe that a child is a member or eligible for membership in the tribe is conclusive. (This shall not be construed as an amendment of present tribal enrollment policies) (See Definition 21).

Note: Enrollment is the term commonly used to refer to the status of an Indian person as a part of a specific Indian tribe. However, while enrollment is the common means to establishing membership in an Indian tribe, it is not the only means. A person may have membership in a tribe without being enrolled according to criteria established by that tribe. This criteria may be established by tribal ordinance and may be unique to the tribe. A determination by the tribe that a child is a member of or eligible for membership in the tribe is conclusive.

#### **B. TRANSFERS TO TRIBAL SOCIAL SERVICES AGENCIES AND TRIBAL COURTS**

1. Mandatory Transfers. DHS and the Tribes agree that, except in emergencies, the following child custody/placement proceedings must be transferred to the tribal social services agencies for appropriate action in tribal court or directly to tribal court:

- a. any such proceeding involving a ward of tribal court, regardless of the domicile or residence of the child. (25 U.S.C. ' 1911(a)); and
- b. any such proceeding involving an Indian child who resides or is domiciled on an Indian reservation where there is a tribal court vested by the governing body of the tribe with jurisdiction over such proceedings. (25 U.S.C. ' 1911(a)).

2. Conditional Transfers DHS and the Tribes agree that, except in emergencies, any child placement/custody proceedings involving an Indian child who neither resides nor is domiciled within an Indian reservation but whose tribe has established a tribal court and vested it with jurisdiction over such proceedings must be transferred to the tribal social services agency for appropriate proceedings in tribal court or directly to tribal court, unless:

- a. good cause exists for denying the transfer;
- b. either parent or the child objects, in writing, to the transfer, or

- c. the designated tribal representative declines, in writing, to accept the referral or the tribal court declines, in writing, to accept jurisdiction over the proposed proceeding (adapted from 25 U.S.C. ' 1911 (b) and Minn. Stat. ' 257.354, subd. 3 (1996)).

In determining good cause not to transfer pursuant to clause (a) of this paragraph, the factors set forth in the Bureau of Indian Affairs Guidelines (Federal Register, Vol. 44, No. 228, Nov. 26, 1979) shall be considered. The DHS and the Tribes agree that these BIA Guidelines, as interpreted by the courts, require that, whenever an LSSA or any other party opposes a transfer of jurisdiction, such party has the burden of establishing good cause not to transfer and must provide a written explanation of its opposition to the tribe(s) and to the parties who support the transfer.

3. Transfer Procedures DHS and the Tribes further agree that the Indian Child Welfare Procedures Manual will include procedures for identifying cases that must be handled by tribal courts and tribal social services agencies pursuant to paragraphs 1 and 2 of this section and for referring them to the tribal social services agency of the child=s tribe for appropriate proceedings in tribal court or directly to the tribal court at the earliest possible stage in the intervention process, preferably prior to initiating any action in state court. The Manual shall also contain procedures for identifying and handling emergency placements that recognize the limited and temporary nature of such placements, and shall encourage the provision of post-transfer assistance to the tribal social services agency. The DHS and the Tribes agree that an Indian child=s tribe may intervene in a state court child custody/placement proceeding for the purpose of requesting a transfer of jurisdiction to tribal court or for asserting its other rights under ICWA and MIFPA at any time, even in the advanced stages of such proceeding, and that this right will be addressed in the Manual.

## **PART IV. FUNDING ISSUES**

### **A. FOSTER CARE MAINTENANCE PAYMENT**

It is the position of DHS and the tribes that, to the extent an Indian child is otherwise eligible for foster care maintenance payments under Minnesota law, the LSSA shall pay for the cost of foster care of Indian children who are placed by a state or tribal court or through a voluntary placement agreement in licensed foster homes or homes licensed or approved by the tribes. It is the position of DHS and the tribes that the LSSA's obligation is subject to the same eligibility standards and rates of support applicable to other children for whom the LSSA pays foster care. In any case where the tribal court orders placement through a LSSA, the court shall provide to the local agency notice and an opportunity to be heard regarding the placement. Determination of the county of financial responsibility for the placement shall be determined by the LSSA in accordance with Minn. Stat. ' 256G.02, subd. 4. Disputes concerning the county of financial responsibility shall be settled in the manner prescribed in Minn. Stat. ' 256G.09.

### **B. ADOPTIVE PLACEMENT COSTS**

Subject to the rules of the Commissioner, and the provisions of Minn. Stat. ' 259.67, subd. 7, a Minnesota licensed child-placing agency or LSSA shall receive a reimbursement from the Commissioner equal to 100 percent of the reasonable and appropriate cost of providing adoption services for an Indian child certified as eligible for adoption assistance. Such assistance may include adoptive family recruitment, counseling, and special training when needed. A Minnesota licensed child-placing agency shall receive reimbursement for adoption services it purchases for or directly provides to an eligible child. A LSSA shall receive such reimbursement for only adoption services it purchases for an eligible child.

A Minnesota licensed child-placing agency or LSSA seeking reimbursement under this subdivision shall enter into a reimbursement agreement with the Commissioner before providing adoption services for which reimbursement is sought. No reimbursement under this section shall be made to an agency for services provided prior to entering a reimbursement agreement. Separate reimbursement agreements shall be made for each Indian child and separate records shall be kept on each child for whom a reimbursement agreement is made. Funds encumbered and obligated under such an agreement for the child remain available until the terms of the agreement are fulfilled or the agreement is terminated.

DHS will work with the tribes to assist in the establishment of tribal adoption organizations able to be licensed as child-placing agencies. Children certified as eligible for adoption assistance who are protected under ICWA should, whenever possible, be served by the tribal governing body, tribal courts, or a licensed Indian child-placing agency.

### **C. ADOPTION ASSISTANCE PAYMENT**

DHS, in coordination with the tribe's social services agency, agrees to provide adoption assistance payments to adoptive parents who have obtained the adoption of a child through a tribal court, provided that the child and the adoptive parents meet all of the program eligibility

requirements set forth in 42 U.S.C. 670 through 679a and the requirements of Minn. Stat. ' 259.67 as well as other applicable federal and state regulations.

**D. FUTURE FUNDING**

DHS agrees to continue to work with the tribes regarding social service funding issues and re-evaluate future funding possibilities.

**PART V. MISCELLANEOUS PROVISIONS**

**A. PERIODIC REVIEW OF FOSTER CARE & PREADOPTIVE PLACEMENT**

The LSSA is required by P.L. 96-272 to conduct a periodic review of all voluntary and involuntary foster placements and preadoptive placements of Indian children not less than every six months unless such reviews are being conducted by tribal social services or state court. In any review of the foster or preadoptive placement of an Indian child, the LSSA will notify the tribe, parent(s), Indian custodian(s), extended family members, and the child if over the age of twelve (12). Notice must be sent at least fourteen (14) days prior to the review. Each tribe in which the child is eligible for membership, will receive notice, and has a right to participate in the review and shall have access to all files and documents pertaining to placement. A child over the age of twelve also shall have a right to participate in the review. In reviews of foster placements where parental rights have been terminated, the parent(s) or Indian custodian(s) of the child will not be notified of the review and do not have a right to participate.

At a minimum, the review will evaluate the suitability of the foster or preadoptive placement, including but not limited to the suitability of the placement under ICWA, the necessity of continuing the child in foster or preadoptive placement, and the prospect for terminating the placement and returning the child to the custody of the parent(s) or Indian custodian(s) or permanent placement of the child. The review will also evaluate the suitability and effectiveness of the services rendered to the child and family, and efforts made to facilitate visitation with parent(s), Indian custodian(s), siblings, and extended family.

**B. RECRUITMENT/REGISTRY OF FOSTER AND ADOPTIVE HOMES**

1. Recruitment

DHS and the tribe(s) agree to cooperate in a joint effort to develop a plan to recruit Indian foster and adoptive homes. The recruiting plan may include plans to utilize the media, Indian organization resources, mailing to members of such organizations, door-to-door solicitation within Indian communities, national and regional adoption resource exchange, and other means likely to succeed in securing Indian foster and adoptive homes for Indian children. DHS shall provide training to assist potential Indian foster care providers to comply with tribal and state licensing standards for foster or adoptive homes.

2. Registry

If available resources permit, DHS agrees to establish and maintain a registry of all Indian homes licensed by the State of Minnesota, licensed or approved by a tribe, and available to receive Indian children for foster care or adoption. The registry will identify the name, address, tribal affiliation of the home, whether the home is licensed or approved by DHS or a tribe, and whether the home is available for foster or adoptive placement or both. The registry will also identify for each home any preconditions to the

acceptance of a child, such as, willingness to only accept a relative, a member of the same tribe, a child without mental or physical handicap, or that the home has indicated no preconditions. Upon request, a tribe shall have access to any of the records maintained as part of the registry in accordance with the Data Practices Act and other applicable Minnesota laws.

**C. DHS SERVICES IN TRIBAL PLACEMENT MATTERS**

DHS recognizes its responsibility to give full faith and credit to the public acts, records, and judicial proceedings of any tribe. DHS shall provide training and technical support to assist the LSSAs whenever they assume legal responsibility or legal custody for placement, care, and supervision of an Indian child.

**D. INTER-STATE COMPACT ON THE PLACEMENT OF CHILDREN**

Whenever DHS is considering whether to place an Indian child pursuant to the Inter-State Compact on the placement of children, DHS will follow the provisions of the ICWA and the Agreement, including placement preferences requirements for Indian children.

1. Indian Children Being Sent From Other States

If the transfer forms indicate that the child is Indian, DHS will not approve the transfer/placement until documentation is furnished stating that the child=s tribe has been notified.

In responding to the sending state=s request, DHS shall be governed by the best interests of the Indian child as set forth in this Agreement. If the child is an Indian child, and the proposed placement is not within the order of preference identified in ICWA, MIFPA, or this Agreement, DHS shall not accept the child for placement in Minnesota unless the placement meets the good cause exception to the placement preferences as set forth in ICWA and relevant case law and the definitions herein. In making the determination as to whether the placement meets the A good cause exception@ to the placement preferences, DHS shall consult with the Indian child=s tribe.

A copy of the sending state=s request shall also be sent by DHS to the Ombudsperson for Indian Families for the State of Minnesota, if the proposed placement is outside of the order of preference and the tribe is outside of the State of Minnesota.

2. Requests by Minnesota to Send Indian Children to Another State

Whenever DHS makes a request to another state that an Indian child be sent there for purposes of foster care or preadoptive placement, a copy of the request shall be sent at the same time to the child=s tribe(s).

3. Review of Indian Children Currently in Placement

Following the effective date of this Agreement, DHS will provide the tribal social services agencies with information on all Indian children currently in placement, who have been sent under the compact to another state, or who have been sent by another state to the State of Minnesota. If the resources permit, DHS will make such reports to the tribal social service agencies annually. The information shall include information received by DHS on the 100-A form which is entitled "Interstate Compact Application Request To Place Child" and which is used by DHS for the interstate placement of children. The information on that form includes:

- a. Full name of the child, and the child's date of birth;
- b. Name/address/telephone number of the person(s) or agency responsible for planning for the child;
- c. Sex of the child;
- d. Name of the child's natural parents;
- e. Whether the child is an Indian child;
- f. Name/address/ telephone number of the agency or person financially responsible for the child;
- g. Name/address/telephone number of the facility or home where child is to be placed;
- h. Type of care the child will be receiving;
- i. Legal status of the child (i.e., who has legal custody and whether parental rights have been terminated);
- j. Whether other services have been requested and whether a home study has been requested; and
- k. Name/address/telephone number of supervising agency in receiving state.

If a tribe learns of a placement of an Indian child that fails to meet the placement preferences or the good cause exceptions set forth in ICWA, MIFPA, or this Agreement, upon request from the tribe, DHS will assist the tribe in remedying the placement so that it conforms with ICWA, MIFPA, and this Agreement.

#### 4. Tribal Placements

Upon request by the Indian child's tribe, DHS will assist the tribe in placing of Indian children from Minnesota to another state.



5. Retention of Jurisdiction

The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency=s state. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of placement.

**E. UNIFORM CHILD CUSTODY JURISDICTION ACT**

DHS and the Indian child=s tribe may agree to jointly review the need for the tribe=s adoption of the Uniform Child Custody Jurisdiction Act. If such adoption is jointly determined by DHS and the tribe to be desirable, DHS agrees to provide information to the tribe on how to adopt this law in a way that will be recognized by the State of Minnesota and other states.

**F. PROCEDURES TO IMPLEMENT ICWA, MIFPA, AND THIS AGREEMENT**

DHS agrees to work with the tribes to develop an Indian Child Welfare Procedures Manual that will provide direction and assistance to LSSAs with regard to the implementation of ICWA, MIFPA, and this Agreement. DHS agrees that the Indian Child Welfare Procedures Manual will then be incorporated into the DHS Social Services Manual which is distributed by DHS to the LSSAs. DHS agrees that the procedures that will eventually be incorporated in the DHS Social Services Manual will set forth DHS= and the tribes= position as to how the requirements of ICWA, MIFPA, and this Agreement should be carried out.

**G. COORDINATION OF AGENCIES**

DHS will inform other agencies that have responsibilities regarding Indian children about the existence and contents of this Agreement in an effort to solicit their cooperation in carrying out its principles and purposes.

AG:105971 v1



Date: \_\_\_\_\_

Date: \_\_\_\_\_

Doris Isham, Chairman  
Bois Forte Band of Chippewa  
Human Services  
13090 Westley Drive, P.O. Box 26  
Nett Lake, MN 55772

Norman Deschampe, Chairman  
Grand Portage Band of Chippewa  
Human Services  
P.O. Box 428  
Grand Portage, MN 55605

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Gary Frazer, Executive Director  
Minnesota Chippewa Tribe  
P.O. Box 217  
Cass Lake, MN 56633-0217

Bobby Whitefeather, Chairman  
Red Lake Band of Chippewa  
Social Services  
P.O. Box 427  
Red Lake, MN 56671

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Eugene McArthur, Chairman  
White Earth Reservation Tribal Council  
Social Services  
P.O. Box 418  
White Earth, MN 56591

Eli O. Hunt, Chairman  
Leech Lake Band of Chippewa  
Social Services Division  
Route 3, Box 100  
Cass Lake, MN 56633

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Stanley Crooks, Chairman  
Shakopee Mdewakanton Sioux Community  
Social Services  
2330 Sioux Trail NW  
Prior Lake, MN 55372

Robert Peacock, Chairman  
Fond du Lac Band of Chippewa  
Tribal Social Services  
1720 Big Lake Road  
Cloquet, MN 55720

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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Roger Prescott, Chairman  
Lower Sioux Community  
Social Services  
P.O. Box 308  
Morton, MN 56270

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Darrell Campbell, Chairman  
Prairie Island Indian Community  
Prairie Island Family Health Department  
1158 Island Boulevard  
Welch, MN 55089

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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Dallas Ross, Chairman  
Upper Sioux Board of Trustees  
P.O. Box 147  
Granite Falls, MN 56241

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David Doth, Commissioner  
Minnesota Department of Human Services  
444 Lafayette Road  
St. Paul, MN 55155-3815

Date: .....  
AS TO FORM AND EXECUTION:  
HUBERT H. HUMPHREY III  
Attorney General  
State of Minnesota

THERESA M. COURI  
Assistant Attorney General  
Atty. Reg. No. 23333X  
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# **PART I**

## **INTRODUCTION**

## **PART II**

# **GENERAL AGREEMENT IMPLEMENTATION PROVISIONS**

## **PART III**

# **JURISDICTIONAL ISSUES**

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**PART V**

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