

**MEMORANDUM OF AGREEMENT BETWEEN NISQUALLY TRIBE AND WASHINGTON STATE
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES FOR SHARING RESPONSIBILITY IN
DELIVERING CHILD WELFARE SERVICES TO CHILDREN OF THE NISQUALLY TRIBE**

1. Introduction

- a. This Memorandum of Agreement (MOA) is entered into between the Nisqually Tribe and the Washington State Department of Children, Youth, and Families (DCYF), each acting in its representative capacity. This Agreement is based on the fundamental principles of the government-to-government relationship acknowledged in the 1989 Centennial Accord, the Indian Child Welfare Act (ICWA - federal law), the Washington State Indian Child Welfare Act, and the collaborative relationship developed by the Tribe and DCYF through contract, practice, and policy; including DCYF Administrative Policy 10.03. A non-exclusive compilation of laws stating DCYF's authority and guiding its child welfare activities is set forth in Attachment B of this agreement.
- b. This Agreement recognizes the sovereignty of the Tribe and of the State of Washington, while also acknowledging and respecting the interests of each sovereign party to this agreement.
- c. The Tribe and DCYF acknowledge that a court, either the Tribe or State of Washington, may have jurisdiction over a child welfare proceeding. Each of the parties to this agreement acknowledges that the law of the jurisdiction in which a child welfare judicial proceeding is initiated and maintained is sovereign within that jurisdiction and governs the proceeding.

2. Purpose

Washington State law authorizes DCYF to purchase care for Indian children who are in the custody of an Indian tribe, pursuant to parental consent or tribal court order, subject to the same eligibility standards and rates of support applicable to other children for whom DCYF purchases care. The purpose and objective of this Agreement is to clarify the roles and responsibilities of the Tribe and DCYF, to clarify the responsibilities of the Tribe and DCYF when Child Protective Services (CPS) are provided to tribal children, to enhance coordination and cooperation between the Tribe and DCYF in providing appropriate child welfare services to Indian children who are under the jurisdiction of the tribal court, and to coordinate with the Tribe when its Indian children are in the custody of DCYF and under the jurisdiction of a state juvenile court. The overarching purpose of this agreement is the safety and well-being of Indian children.

3. Authority

ICWA, 25 U.S.C. § 1919, authorizes states and tribes to enter into agreements for the care and custody of Indian children. The Tribe is specifically authorized to enter into this agreement by Nisqually Tribal Code Title 50. DCYF is specifically authorized to enter into this Agreement chapter 39.34 RCW, the Interlocal Cooperation Act, which permits an agency to enter into an Agreement with an Indian tribe for their mutual advantage and cooperation. DCYF recognizes that the Tribe's execution of this Agreement does not constitute a waiver of its right to sovereign immunity.

4. Definitions

- a. **"Jurisdiction"** means the legal authority of a state or tribal court to hear a child custody proceeding. The Tribe and DCYF acknowledge that either or both of their child welfare programs may be involved in providing services, including CPS and Child Welfare Services, to Tribal children regardless of whether a court action has been initiated, or which court has jurisdiction over a child's case.
- b. **"Indian child"** means an unmarried and unemancipated person who is under 18 years of age and is either: (a) a member of the Nisqually Tribe; or (b) eligible for membership in the Nisqually Tribe and is the biological child of a member of a federally recognized tribe. The Tribe has sole authority to determine whether a child is a member or eligible for membership in the Tribe.
- c. **"Tribal child"** means a child who is not an Indian Child, but who the Tribe considers to be part of its Tribal Community. Obligations and responsibilities of this MOA that pertain to a Tribal Child will only apply if the child's parent has executed written consent.
- d. **"Notice"** means the legal Notice required under RCW 13.38.070 and 25 U.S.C. § 1912 to inform tribes of: (1) the initiation of an action to place an Indian child in foster care or to terminate parental rights to an Indian child and (2) the Tribe's right to intervene.

5. Child Protective Services

a. Introduction:

- (1) In every case in where DCYF receives an allegation of abuse or neglect of an Indian child who resides on the reservation, DCYF will notify the Tribe of the allegation. Notification will be in writing, or by phone, fax, or email, within 24 hours for emergent cases and the next business day for all other intake types, including cases that are not screened in by DCYF for investigation or Family Assessment Response (FAR). The method and time of notification will be documented by DCYF. The method preferred by the Tribe is by fax 360-486-9555 Attention: Intake and After Hours Referral Contact.
- (2) If an allegation of child abuse or neglect involves apparent criminal activity, DCYF will notify Tribal/State/Local law enforcement in the jurisdiction where the alleged abuse or neglect occurred.
- (3) The Tribe and DCYF each agree to inform the other of the outcome of CPS investigations

that result in a "founded" finding of child abuse or child neglect involving Indian children.

- (4) Regardless of the Tribe's involvement during the investigation of a CPS allegation, DCYF will contact the Nisqually Office of the Tribal Attorney directly prior to filing a dependency petition in state court involving an Indian child, in order to give the Tribe the opportunity to file an action in tribal court.
- (5) DCYF has a two-path response to allegations of child abuse and neglect. Allegations that are screened-in for a response will be assigned by DCYF to either: (1) the traditional investigative pathway or (2) to the FAR pathway. DCYF has the sole authority to determine the pathway used to respond to an allegation of child abuse or neglect, including the authority to change the pathway depending on the risk or safety level.

b. CPS Investigations:

- (1) **Investigations of Allegations of Abuse and Neglect of Indian Children residing on the Nisqually Reservation:**
 - (a) Tribe will respond to allegations of abuse or neglect occurring of Indian children occurring on the Nisqually Reservation, unless the Tribe makes a specific written request that DCYF respond to the screened in intake. The Tribe's written request may be informal, e.g., via email, and may be made by the Nisqually Children and Family Services Program Manager.
 - (b) DCYF's CPS Intake will notify the Tribe within 24 hours for all intakes with a 24-hour response time and the next business day for all other intakes, including intakes that are screened out.
 - (c) If the Tribe has an alternative response, similar to DCYF's FAR, or if voluntary services are needed by a family during a Tribal CPS investigation, DCYF will assist the Tribe in accessing services and supports for the family.
 - i. Children served by the Tribe are eligible for services funded and contracted by DCYF. Eligibility for these services must be consistent with the eligibility criteria used for children served by DCYF.
 - ii. A description of the services and supports currently available to families and children under the CPS program, including a limited description of the eligibility criteria for those services, is attached to this agreement as Attachment A.

(2) CPS Response (Investigation or FAR) on the Nisqually Reservation by DCYF, Per Tribal Request:

- (a) When the Tribe requests CPS services for Indian children and youth on the Nisqually Reservation, DCYF will take the lead on the CPS response and complete the investigation or FAR. The Tribe and DCYF will collaborate on the response and concurrently serve the child and family during the response, however, DCYF will have the lead and must follow state law and DCYF policies including DCYF timeframes.
- (b) Before DCYF invokes state court jurisdiction over an Indian child who is at imminent risk of harm, by filing a dependency petition and requesting a pick up order, DCYF will provide the Tribe with an opportunity to exercise tribal jurisdiction.
- (c) DCYF will determine whether the allegation of child abuse or neglect should be screened in and assign the type of CPS response (Investigation or FAR), and DCYF is required to follow state law and its own policies in responding to child abuse or neglect allegations.
- (d) In a FAR response, DCYF will assign the case to a specific DCYF worker, who will coordinate with Tribal social worker in assessing appropriate services and supports for the family.
- (e) DCYF will provide a point of contact to assist the Tribe in accessing CPS voluntary services. The DCYF point of contact is the Tribe's contact for requesting services and will work with the tribe to clarify eligibility for services, to expedite services and to verify payment. The DCYF point of contact will be available to assist or arrange for another worker to assist the Tribe in preparing the necessary documentation to request adolescent services and will invite the Tribal social worker to attend staffings to approve intensive services, such as Behavior Rehabilitation Services (BRS) and services for Sexually Aggressive Youths (SAY).
- (f) The Tribe will provide a point of contact to work with DCYF on service issues.
- (g) The DCYF and tribal contacts are listed in Attachment C.

(3) CPS Response (Investigations or FAR) Outside the Nisqually Reservation:

- (a) The Tribe and DCYF agree to collaborate in providing CPS investigative or FAR services and supports to Indian children who are alleged to have been abused or neglected off the Nisqually Reservation.
- (b) DCYF's CPS Intake will notify the Tribe within 24 hours for emergent cases and the next business day for all other cases if a child abuse or neglect intake has been received by DCYF, alleging the abuse or neglect of an Indian child occurred off the reservation and will give the Tribe an opportunity to participate in the CPS response, either an investigation or FAR.
- (c) Based on state law and its policies and screening tools, DCYF will decide whether the

response will be an investigation or FAR. In cases where a CPS investigation occurs, DCYF will determine whether the allegation is founded or unfounded.

c. CPS Investigation Pathway:

- (1) DCYF's CPS investigator will direct the investigation, deciding which social workers will interview which individuals and which social workers will gather other information.
- (2) A Tribal social worker will have the opportunity to be present during interviews and investigations of child abuse or neglect allegations. A Tribal social worker's unavailability is not a reason not to meet DCYF timeframes.
- (3) DCYF will consult with the Tribe in making the determination whether the allegation is founded or unfounded. DCYF has the ultimate responsibility to determine whether the allegation will be founded or unfounded.
- (4) CPS investigation should be completed within policy timeframes and the Tribe will be given the investigative report (no matter what the finding).
- (5) If the allegation is founded for abuse or neglect, pursuant to Ch. 26.44 RCW and Ch. 388-15 WAC, the subject of the investigation has a right to challenge that finding under state law.

d. CPS FAR Pathway:

- (1) DCYF's FAR worker has ultimate responsibility for assessing the family's needs and strengths and for arranging for or providing services and supports.
- (2) The DCYF worker will contact the identified Tribal FAR worker and will give that worker an opportunity to be present at the assessment and at family and community meetings to determine safety and service plans. A Tribal social worker's unavailability is not a reason to not meet DCYF timeframes.
- (3) DCYF and the Tribe will collaborate to identify and develop community supports and services for the family.
- (4) The Tribe may determine that it will continue, at its own expense, to provide community or tribal supports and services to the family after the FAR assessment and services have concluded.

6. For Children Under the Jurisdiction of the Tribal Court

- a. The parties acknowledge the State's position that, pursuant to PL 83-280, it has jurisdiction concurrent with the Tribe over child custody proceedings involving Nisqually children. The parties further acknowledge that it is the Tribe's position that it has exclusive jurisdiction over any child custody proceeding involving a Nisqually child who resides or is domiciled within the Nisqually reservation. The parties understand that nothing in this Agreement may be deemed as a waiver or abandonment of either party's position regarding jurisdiction.
- b. The parties agree that the Nisqually Tribal Court has exclusive jurisdiction over an Indian child who is already its ward, subject to the emergency removal exceptions in 25 USC § 1911(a) and RCW 13.38.140(1).
- c. Before DCYF invokes state court jurisdiction over an Indian child who is at imminent risk of harm, by filing a dependency petition and requesting a pick up order, DCYF will provide the Tribe with an opportunity to exercise tribal jurisdiction.
- d. Indian children in the custody of the Tribe are eligible for foster care services funded and contracted by DCYF. Eligibility for these services must be consistent with the eligibility criteria used for children served by DCYF.
- e. A description of the services currently available to families and children, including a limited description of the eligibility criteria for those services, is attached to this agreement as Attachment A.
- f. When the Tribe requests child welfare services for an Indian child in the custody of the Tribe, DCYF will:
 - (1) Assign the case to a specific social worker, selected by DCYF, but who recognizes that the Tribe has custody of and decision making authority over the child, and who is willing to accept the customs and traditions of the Tribe. The DCYF social worker will not be responsible for case management, but instead will assist the Tribal social worker in accessing services.
 - (2) Maintain a child file consisting of the referral information, the Tribal case plan, Tribal court documents, and payment information.
 - (3) Work with the Tribal social worker to determine what services would best meet the needs of the child and, at the request of the Tribe, pursue intensive services for the child, using established DCYF procedures. The DCYF social worker will help make the Tribe aware of appropriate services available through DCYF, as well as how to access those services.
- g. The Information regarding eligibility will be provided by the Tribal social worker and supplemented by the Tribal social worker when requested. The Tribal social worker has responsibility for recommending and overseeing the administration of services.

- h. DCYF will provide a point of contact to assist the Tribe in accessing services for Indian children in its custody. The point of contact is the Tribe's contact for requesting services and will work with the Tribe to clarify eligibility for services, to expedite services and to verify payment.
- i. The DCYF point of contact will be available to assist, or arrange for another worker to assist, the Tribe in preparing the necessary documentation to request adolescent services and will invite the Tribal social worker to attend staffings to approve intensive services, such as Behavior Rehabilitation Services and services for sexually aggressive youths.
- j. The Tribe will provide a point of contact to work with DCYF on service issues for Indian children in its custody. The Tribe will provide current court orders that include current placement of child(ren). The Tribe agrees to inform DCYF within three business days of any change of placement.
- k. The DCYF and Tribal contacts are listed in Attachment C.

7. Indian Children Under the Jurisdiction of the State Court

- a. If a child who is or may be eligible for membership in the Tribe is the subject of a dependency action filed by DCYF in the juvenile court of the State of Washington, DCYF will timely provide Notice to the Tribe of its right to intervene in the action. The Tribe has the right to intervene at any point in a State Juvenile Court proceeding involving a child who is a member of or is eligible for membership in the Tribe. DCYF agrees to assist the Tribe in requesting intervention in such cases.
- b. The Tribe has the right to request, at any time, transfer of jurisdiction of an Indian child's state child custody proceeding, in accordance with state and federal law. DCYF shall assist and support the Tribe in seeking transfer to the Nisqually Tribal Court. Within two weeks of the transfer, DCYF shall provide the case file to the Tribe.
- c. If jurisdiction of the action is not transferred to Tribal court, then the Tribe will designate a specific person or position to work with the DCYF social worker to assist in locating an appropriate placement and to consult with the DCYF social worker in developing an appropriate case plan.
- d. If DCYF has placement authority for an Indian child, placement shall be within reasonable proximity to the child's home when possible and appropriate. Unless the juvenile court finds good cause to the contrary, placement decisions shall be consistent with the following Tribal preferences:
 - (1) With a member of the child's immediate family who resides within or near Nisqually community.
 - (2) With a member of the child's immediate family regardless of residence.
 - (3) With a member of the child's extended family who resides within or near the Nisqually community.

- (4) With a member of the child's extended family regardless of residence.
 - (5) With another person who resides within or near the Nisqually Community who has knowledge of and a desire to foster the child's tribal status and special needs.
 - (6) With a member of, or a person eligible for, enrollment in the child's tribe.
 - (7) With a member of another Indian tribe.
 - (8) With any person who has knowledge of and a desire to foster the child's tribal status and special needs (including but not limited to cultural, therapeutic, and needs based on disability).
- e. The Tribe will designate an individual who has authority and responsibility to provide qualified expert witness testimony as required by the state and federal ICWA. The Tribe agrees that it will provide an expert witness at the time and place of any trial in which an Indian qualified expert witness is required.
 - f. The Tribe and DCYF will work together to develop a plan for any Indian child who is placed in a non-Tribal foster home to assist the child in developing or maintaining an understanding of the Tribe's customs, traditions, and history.
 - g. If the child is a Tribal child, but is not an Indian child, and the child's parent has executed written parental consent, DCYF and the Tribe will collaborate and concurrently serve to find the child an appropriate placement and to develop a plan to assist the child in developing or maintaining an understanding of the Tribe's customs, traditions, and history.
 - h. During permanency planning, if the child is an Indian child under ICWA and is a member or eligible for membership with the Nisqually Tribe, DCYF will consider Nisqually culture and values, including the specific recommendation of the Tribe on long-term placement. It is not the practice or belief of the Nisqually Indian Tribe to terminate parental rights.

8. Information Sharing and Confidentiality

- a. It is the policy of both the Tribe and DCYF to share with each other full information about Indian children that will assist the other in protecting the child and in assessing the child's need and eligibility for and receipt of services. DCYF is required to follow state and federal laws governing confidentiality of records. The Tribe agrees that it will follow state and federal law, or tribal law, if the Tribal Code meets or exceeds state and federal law requirements to protect the records of individuals receiving services from DCYF.
- b. Pursuant to a separate agreement, the Tribe has read-only access to the Statewide Automated Child Welfare Information System (SACWIS), known as FamLink.

9. Collaborative Actions

- a. DCYF, through the Alliance for Child Welfare Excellence, will provide Tribal ICW staff with the opportunity to take advantage of relevant trainings that are available to DCYF staff. The catalog of courses link will be put on the Tribal Relations internet webpage.
- b. The Tribe will provide technical assistance and consultation on Native American cases, as requested by DCYF.
- c. The Tribe will designate at least one candidate from the Tribe for representation on the Local Indian Child Welfare Advisory Committee.

10. Conflict Resolution

The Tribe and DCYF agree that if a dispute arises under this agreement, the process set forth in the DCYF Policy 10.03 or in the General Terms and Conditions of the Intergovernmental Agreement will apply. A copy of the applicable process is set forth in Attachment D.

11. Effect and Modification

- a. This is a working document to guide the Tribe and DCYF in supporting Indian children in need of services. Its description of services may be changed as programs are added or eligibility requirements are changed. Contact persons, services, and other subjects set forth in the Attachments may be updated at any time at the request of either party.
- b. This agreement will be reviewed every two years and will continue in effect until modified or terminated. Either the Tribe or DCYF may terminate this agreement at any time by providing the other party with 30 days' written notice. However, this agreement may be modified at any time by written agreement of the Tribe and DCYF. Any modification may be reflected in an addendum and attached to the agreement.
- c. This agreement is subject to state and federal law and Tribal code, as they exist and as amended during the course of this agreement.

IN WITNESS HEREOF, and by means of the signatures below, the Tribe and DCYF hereby agree to abide by this MOA, effective upon the signature of both parties.

For the Tribe:

E. K. Choike

By: E. Ken Choike
Title: Tribal Chair

Date: 03/17/2021

For the State of Washington:

Pon [Signature]

By:
Title: Secretary, DCYF

Date: 3-25-2021

ATTACHMENTS

ATTACHMENT A – List of Services Available Through DCYF
To be developed by DCYF

ATTACHMENT B – Laws Governing Child Welfare Services

ATTACHMENT C – Tribal and DCYF Contact List

ATTACHMENT D – Dispute Resolution Process

ATTACHMENT E – Tribal Juvenile Code
Nisqually Tribal Code Title 50 Youth

ATTACHMENT A – List of Services Available Through DCYF

A current list of services and service providers will be emailed to the Nisqually Tribe each week.

ATTACHMENT B – Laws Governing Child Welfare Services

A non-exclusive list or summary of significant laws governing the delivery of child welfare services to Indian children in Washington is as follows:

RCW 74.13.031(14): The department and supervising agencies shall have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

RCW 26.44: Washington's Child Abuse Statute establishes who is a mandated reporter of suspected child abuse and neglect.

RCW 26.44.050 – Requires the department or law enforcement to investigate and provide child protective services, upon the receipt of a report concerning the possible occurrence of abuse or neglect, and where necessary to refer such report to the court.

RCW 26.44.030(11) (a) –For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than 90 days from the date the report is received, unless the investigation is being conducted under a written protocol . . . and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

Indian Child Welfare Act: The Washington State and federal ICWAs, RCW Ch. 13.38 and 25 U.S.C. § 1901, *et seq.*, are substantially the same. However, Washington's Act provides some clarity and additional protections that are not included in the federal act. Where state law provides a higher protection to the rights of the parent or child, the state law applies. 25 U.S.C. § 1920. The following provisions are pertinent to this agreement. The complete statute is available at <http://apps.leg.wa.gov/rcw/default.aspx?cite=13.38>. The synopsis below is not word-for-word and has been abbreviated in places where applicable just to this agreement.

RCW 13.38.020 – Application of Chapter This chapter shall apply in all child custody proceedings as that term is defined in this chapter. Whenever there is a conflict between chapter 13.32A, 13.34, 13.36, 26.10, or 26.33 RCW, the provisions of this chapter shall apply.

RCW 13.38.040 – Definitions [selected definitions]

(3) "Child custody proceeding" includes:

(a) "Foster care placement" which means any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home, institution, or with a relative, guardian, conservator, or suitable other person where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) "Termination of parental rights" which means any action resulting in the termination of the parent-child relationship;

- (c) "Preadoptive placement" which means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights but before or in lieu of adoptive placement; and
- (d) "Adoptive placement" which means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

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

(8) "Indian child's family" or "extended family member" means an individual, defined by the law or custom of the child's tribe, as a relative of the child. If the child's tribe does not identify such individuals by law or custom, the term means an adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent, even following termination of the marriage.

(9) "Indian child's tribe" means a tribe in which an Indian child is a member or eligible for membership.

(11) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior because of their status as Indians, including any Alaska native village as defined in 43 U.S.C. Sec. 1602(c).

(13) "Parent" means a biological parent or parents of an Indian child or a person who has lawfully adopted an Indian child, including adoptions made under tribal law or custom. "Parent" does not include an unwed father whose paternity has not been acknowledged or established under chapter 26.26 RCW or the applicable laws of other states.

(15) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings, including but not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or an administrative body of an Indian tribe vested with authority over child custody proceedings.

(1) "Active efforts" means the following:

(a) In any foster care placement or termination of parental rights proceeding of an Indian child under chapter 13.34 RCW, the department shall make timely and diligent efforts to provide or procure such services, including engaging the parent or parents or Indian custodian in reasonably available and culturally appropriate preventive, remedial, or rehabilitative services. This shall include those services offered by tribes and Indian organizations whenever possible. At a minimum "active efforts" shall include:

(i) In any dependency proceeding under chapter 13.34 RCW seeking out-of-home placement of an Indian child in which the department or supervising agency provided voluntary services to the parent prior to filing the dependency petition, a showing to the court that the department actively worked with the parents to engage them in remedial services and rehabilitation programs to prevent the breakup of the family beyond simply providing referrals to such

services.

(ii) In any dependency proceeding under chapter 13.34 RCW, in which the petitioner is seeking the continued out-of-home placement of an Indian child, the department must show to the court that it has actively worked with the parents in accordance with existing court orders and the individual service plan to engage them in remedial services and rehabilitative programs to prevent the breakup of the family beyond simply providing referrals to such services.

(iii) In any termination of parental rights proceeding regarding an Indian child under chapter 13.34 RCW in which the provided services to the parents, a showing to the court that the department or supervising agency social workers actively worked with the parents to engage them in remedial services and rehabilitation programs ordered by the court or identified in the department or supervising agency's individual service and safety plan beyond simply providing referrals to such services.

(2) "Best interests of the Indian child" means the use of practices in accordance with the federal Indian child welfare act, this chapter, and other applicable law, that are designed to accomplish the following: (a) Protect the safety, well-being, development, and stability of the Indian child; (b) prevent the unnecessary out-of-home placement of the Indian child; (c) acknowledge the right of Indian tribes to maintain their existence and integrity which will promote the stability and security of their children and families; (d) recognize the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community; and (e) in a proceeding under this chapter where out-of-home placement is necessary, to prioritize placement of the Indian child in accordance with the placement preferences of this chapter.

(16) "Tribal customary adoption" means adoption or other process through the tribal custom, traditions, or laws of an Indian child's tribe by which the Indian child is permanently placed with a nonparent and through which the nonparent is vested with the rights, privileges, and obligations of a legal parent. Termination of the parent-child relationship between the Indian child and the biological parent is not required to effect or recognize a tribal customary adoption.

RCW 13.38.060 and RCW 13.38.080 – Jurisdiction/Transfer (1) An Indian tribe shall have exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe, unless the tribe has consented to the state's concurrent jurisdiction, the tribe has expressly declined to exercise its exclusive jurisdiction, or the state is exercising emergency jurisdiction.

(2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding, the Indian tribe may retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

Transfer of Jurisdiction - In any child custody proceeding involving an Indian child who is not domiciled or residing within the reservation of the Indian child's tribe, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe, upon the motion of any of the following persons: (a) Either of the child's parents; (b) The child's Indian custodian; (c) The child's tribe; or (d) The child, if age twelve or older.

The transfer is subject to declination by the tribe. The tribe shall have 75 days to affirmatively respond to a motion or order transferring jurisdiction to the tribal court. A failure of the tribe to respond within the 75-day period shall be construed as a declination to accept transfer of the case. . . .

(3) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's tribe, the court shall not transfer the proceeding.

(4) Following entry of an order transferring jurisdiction to the Indian child's tribe:

RCW 13.38.070 – Notice (1) In any involuntary child custody proceeding seeking the foster care placement of, or the termination of parental rights to, a child in which the petitioning party or the court knows, or has reason to know, that the child is or may be an Indian child as defined in this chapter, the petitioning party shall notify the parent or Indian custodian and the Indian child's tribe or tribes, by certified mail, return receipt requested, and by use of a mandatory Indian child welfare act notice. . . . No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe. The parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for the proceeding.

RCW 13.38.140 – Emergency removal or placement (1) The ICWA shall not be construed to prevent the department or law enforcement from the emergency removal of an Indian child who is a resident of or is domiciled on an Indian reservation, but is temporarily located off the reservation or the emergency placement of such child in a foster home to prevent imminent physical damage or harm to the child.

(2) The department or law enforcement agency shall ensure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of the federal Indian child welfare act and this chapter to transfer the child to the jurisdiction of the appropriate Indian tribe or restore the child to the child's parent or Indian custodian, if appropriate.

(3) When the nature of the emergency allows, the department must notify the child's tribe before the removal has occurred. If prior notification is not possible, the department shall notify the child's tribe by the quickest means possible. The notice must contain the basis for the Indian child's removal, the time, date, and place of the initial hearing, and the tribe's right to intervene and participate in the proceeding.

RCW 13.38.090 – Intervention The Indian child's tribe has a right to intervene and participate as a party on any point in the child custody proceeding.

RCW 13.38.120 – Right to examine court documents Each party to a child custody proceeding involving an Indian child has the right to examine all reports or other documents filed with the court.

RCW 13.38.100 – Full faith and credit The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to Indian child custody proceedings.

RCW 13.38.130 – Qualified Expert Witness No involuntary foster care placement or termination of parental rights may be ordered in a child custody proceeding in the absence of a determination, supported by clear and convincing evidence (foster care) or beyond a reasonable doubt (termination), including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. For purposes of this subsection, any harm that may result from interfering with the bond or attachment between the foster parent and the child shall not be the sole basis or primary reason for continuing the child in foster care.

... (4)(a) For purposes of this section, "qualified expert witness" means a person who provides testimony in a proceeding under this chapter to assist a court in the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child. In any proceeding in which the child's Indian tribe has intervened pursuant to RCW 13.38.090 or, if the department is the petitioner and the Indian child's tribe has entered into a local agreement with the department for the provision of child welfare services, the petitioner shall contact the tribe and ask the tribe to identify a tribal member or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices. The petitioner shall notify the child's Indian tribe of the need to provide a "qualified expert witness" at least twenty days prior to any evidentiary hearing in which the testimony of the witness will be required. If the child's Indian tribe does not identify a "qualified expert witness" for the proceeding on a timely basis, the petitioner may proceed to identify such a witness pursuant to (b) of this subsection. [Subsection (b) lists persons who can serve as the expert witness if the tribe does not identify an expert.]

(b) In any proceeding in which the child's Indian tribe has not intervened or entered into a local agreement with the department for the provision of child welfare services, or a child's Indian tribe has not responded to a request to identify a "qualified expert witness" for the proceeding on a timely basis, the petitioner shall provide a "qualified expert witness" who meets one or more of the following requirements in descending order of preference:

(i) A member of the child's Indian tribe or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices for this purpose;

(ii) Any person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe;

(iii) Any person having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and child rearing practices in Indian tribes with cultural similarities to the Indian child's tribe; or

(iv) A professional person having substantial education and experience in the area of his or her specialty.

(c) When the petitioner is the department or a supervising agency, the currently assigned department or agency caseworker or the caseworker's supervisor may not testify as a "qualified expert witness" for purposes of this section. Nothing in this section shall bar the assigned department or agency caseworker or the caseworker's supervisor from testifying as an expert witness for other purposes in a proceeding under this chapter. Nothing in this section shall bar other department or supervising agency employees with appropriate expert qualifications or experience from testifying as a "qualified expert witness" in a proceeding under this chapter. Nothing in this section shall bar the petitioner or any other party in a proceeding under this chapter from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court including the

determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child.

RCW 13.38.180 – Placement Preferences (1) Emergency removals: A good faith effort will be made to place the Indian child in the least restrictive setting which most approximates a family situation, which is in reasonable proximity to the child's home and in which the child's special needs will be met.

(2) In any foster care or preadoptive placement, a preference shall be given, in absence of good cause to the contrary, to the child's placement with one of the following:

- (a) A member of the child's extended family;
- (b) A foster home licensed, approved, or specified by the child's tribe;
- (c) An Indian foster home licensed or approved by an authorized non-Indian licensing authority;
- (d) A child foster care agency approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs;
- (e) A non-Indian child foster care agency approved by the child's tribe;
- (f) A non-Indian family that is committed to:
 - (i) Promoting and allowing appropriate extended family visitation;
 - (ii) Establishing, maintaining, and strengthening the child's relationship with his or her tribe or tribes; and
 - (iii) Participating in the cultural and ceremonial events of the child's tribe.

(3) In the absence of good cause to the contrary, any adoptive or other permanent placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order:

- (a) Extended family members;
- (b) An Indian family of the same tribe as the child;
- (c) An Indian family that is of a similar culture to the child's tribe;
- (d) Another Indian family; or
- (e) Any other family which can provide a suitable home for an Indian child, such suitability to be determined in consultation with the Indian child's tribe or, in proceedings under chapter 13.34 RCW where the Indian child is in the custody of the department or a supervising agency and the Indian child's tribe has not intervened or participated, the local Indian child welfare advisory committee.

(4) The tribe can set a different order of placement preference.

(5) Where appropriate, the preference of the child or be considered by the court. Where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(6) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside, or with which the parent or extended family members maintain social and cultural ties.

(7) Nothing in this section shall prevent the department or the court from placing the child with a parent to effectuate a permanent plan regardless of the parent's relationship to the child's tribe.

RCW Ch. 13.34 – Washington’s Dependency and Termination Statute This statute sets out the requirements for dependency and termination actions. Tribes that intervene in dependency or termination actions have the same rights as all other parties to the proceeding. Some key provisions are the following:

RCW 13.34.136 – (1) Whenever a child is ordered removed from the home, a permanency plan shall be developed no later than 60 days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of the disposition hearing, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(3) Permanency planning goals should be achieved at the earliest possible date. If the child has been in out-of-home care for 15 of the most recent 22 months, the court shall require the department to file a petition seeking termination of parental rights.

RCW 13.34.145 – (1) (c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for 15 months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(3)(b)(vi) At the permanency planning hearing, the court shall order the department to file a petition seeking termination of parental rights if the child has been in out-of-home care for 15 of the last 22 months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a termination of parental rights petition is not appropriate. Any good cause finding shall be reviewed at all subsequent hearings pertaining to the child. For purposes of this section, "good cause exception" includes but is not limited to the following: The child is being cared for by a relative; the department has not provided to the child's family such services as the court and the department have deemed necessary for the child's safe return home; or the department has documented in the case plan a compelling reason for determining that filing a petition to terminate parental rights would not be in the child's best interests.

Federal Interpretation of Compelling Reason (Children’s Bureau Child Welfare Policy Manual Part 8.3C.2e Question 6)

Question: May the State or Tribe define compelling reasons for not filing a petition to terminate parental rights (TPR) in State law or Tribal code?

Answer: No. States and Tribes may not develop a standard list of compelling reasons for not filing for TPR that exempts groups of children. Such a practice is contrary to the requirement that determinations regarding compelling reasons be made on a case-by-case basis. States and Tribes may, however, provide case workers examples of such for training purposes.

RCW 13.36 – Guardianship

Guardianship is a recognized and acceptable permanency option under Washington law. If the child is Title IV-E eligible and is placed with a licensed relative for six months prior to establishing

the guardianship, the relative is eligible for a guardianship subsidy through the Relative Guardianship Assistance Program (R-GAP).

Title IV-B and IV-E of the Social Security Act (as amended by the Adoption Safe Families Act, Foster Connections, Adam Walsh and other federal enactments). The provisions of the federal law are incorporated into Washington's statutes.

Multiethnic Placement Act (MEPA) – is a federal law that (1) prohibits agencies from refusing or delaying foster or adoptive placements because of a child's or foster/adoptive parent's race, color, or national origin; (2) prohibits agencies from considering race, color, or national origin as a basis for denying approval as a foster or adoptive parent; and (3) requires agencies to diligently recruit a diverse base of foster and adoptive parents to better reflect the racial and ethnic makeup of children in out of home care.

ATTACHMENT C – Points of Contact

CPS:

Notice related to CPS issues will be provided to Tribe by contacting:
Lorraine Van Brunt, Manager, Nisqually Children and Family Services
Address: 4820 She-Nah-Num Drive SE, Olympia, WA 98513
Phone: (360) 456-5221
Email: vanbrunt.lorraine@nisqually-nsn.gov

Notice related to CPS issues will be provided to DCYF by contacting:
Area Administrator: Kui Hug
Address: 6860 Capitol Blvd SE Bldg 2, Tumwater, WA 98504-5715
Phone: (360) 628-1962
Email: kui.hug@dcyf.wa.gov

SERVICES:

Identified DCYF TPO SW and Supervisor
Charlie Yang
Address: 6860 Capitol Blvd SE Bldg 2, Tumwater, WA 98504-5715
Phone: (360) 742-8240
Email: charlie.yang@dcyf.wa.gov

Supervisor: Allison Sparks
Address: 6860 Capitol Blvd SE Bldg 2, Tumwater, WA 98504-5715
Phone: (360) 999-0888
Email: allison.sparks@dcyf.wa.gov

If emergency or after-hours services are needed by a child in Tribal care, the contact is:
Intake 1-866-END-HARM

The Tribal point of contact is:
Lorraine Van Brunt, Manager, Nisqually Children and Family Services
Address: 4820 She-Nah-Num Drive SE, Olympia, WA 98513
Phone: (360) 456-5221
Email: vanbrunt.lorraine@nisqually-nsn.gov

ATTACHMENT D – Dispute resolution

From DCYF 10.03 Policy:

In light of the sovereign government status of Tribes, when consultation alone has not been successful in resolving issues at the regional level, Tribes have the authority to raise the issues to the Assistant Secretary, Secretary or the Governor.

