INDIAN CHILD WELFARE POLICIES AND PROCEDURES

1. History

Tribes are sovereign entities, similar to but different from Washington State. The Department of Children, Youth, and Families (DCYF) recognizes the unique cultural and legal status of American Indians and the federally recognized tribes' authority to, among other things:

- Govern their people and their land.
- Define their own tribal membership and citizenship criteria.
- Create tribal legislation, law enforcement, child welfare, and court systems.
- Impose taxes in certain situations as expressed in the Indian Self-Determination and Education Assistance Act of 1975, Pub. L. 93-638.

The DCYF is committed to honoring this government-to-government relationship. As part of our ongoing commitment to ensure consistent departmental compliance with the federal Indian Child Welfare Act (ICWA), Washington State Indian Child Welfare Act (WICWA), the Tribal/State Memoranda of Agreement (MOAs), and other state Indian Child Welfare (ICW) - related laws, caseworkers must:

- Learn about each tribe with whom they work, including federally recognized tribes located outside of Washington State.
- Respect federally recognized tribes' inherent sovereignty and self-determination.
- Familiarize themselves with the history of the government-to-government relationship between Washington State and the federally recognized tribes.
- Understand the role of Recognized American Indian Organizations (RAIOs) in Washington State.
- Adhere to the following documents honoring the government-to-government relationship:
    - Child Welfare policies
    - ICW policies and procedures
    - Tribal/State MOAs
    - DCYF Administrative 10.03 Tribal Consultation policy

There is a rich history that spans over four decades of Washington State partnering with the tribes to improve the outcomes for Indian children and families involved in the child welfare system.

In the late 1960s, a coalition of Washington State federally recognized tribes, off-reservation Indian groups, individuals concerned with the welfare of Indian children, representatives from the Office of the Attorney General, and employees from the Washington State child welfare agency, met to:

- Address the separation of Indian children from their families, communities, and cultures.
- Bring awareness to the welfare of Indian children.

In 1976, the Washington State child welfare agency adopted Washington Administrative Codes that describe the role of the regional Local Indian Child Welfare Advisory Committees (LICWACs). These committees, which have been in existence since 1972, serve in an advisory capacity to DCYF, recommending appropriate case plans and services for Indian children when the children's tribes have not been identified or are not available or involved or at the children's tribes' request. Presently, LICWAC volunteers remain active throughout every region and provide a valuable service to child welfare employees and Indian families.

In 1978, after more than 11 years of education and awareness campaigns and tribal lobbying efforts, Congress enacted the ICWA. This act significantly changed child welfare practices as they apply to Indian children and their families in all states. This landmark law recognizes federally recognized tribes' inherent jurisdiction in child welfare cases, provides processes for the transfer of state cases to tribal courts, and allows for tribal intervention in state court proceedings. It also creates minimum standards for the treatment of children who are members of federally recognized tribes or are the biological children of a members and eligible for membership in state courts and child welfare systems. Shortly thereafter, in 1979, the Bureau of Indian Affairs (BIA) issued non-binding "Guidelines for State Courts; Indian Child Custody Proceedings" for the implementation of ICWA.

In 1987, the Department of Social and Health Services (DSHS) adopted the DSHS Administrative 7.01 American Indian policy. This policy defined the commitment of DSHS to ensure all of its administrations engaged in consultation with Washington State federally recognized tribes and collaborated with RAIOs and individual American Indians and Alaska Natives in DSHS service program planning. The goal of this policy was to ensure quality and comprehensive service delivery to all American Indians and Alaska Natives in Washington State.

Also, in 1987, Washington State entered into Tribal-State MOAs with twenty-four of the then twenty-six Washington State federally recognized tribes, per section 1919 of ICWA. These MOAs set standards for notification, child welfare practice, equal access to services, and cooperative case planning in cases involving Indian children, which is now recognized in RCW 13.38.030.

On August 4, 1989, the Centennial Accord was executed between all federally recognized tribes of Washington and the Washington State. In 2004, federally recognized tribes with treaty reserve rights within the boundaries of Washington State joined. The Centennial Accord, among other things:

- Provides a framework for the government-to-government relationships.
- Prioritizes respectful and thoughtful procedures that address topics of mutual concern.
- Establishes impasse procedures.

In 1991, DSHS created what is now known as the Office of Indian Policy (OIP). OIP is staffed by personnel of Indian ancestry and individuals familiar with tribal communities and served as an advisor to DSHS administrations including the child welfare administration. The goal of OIP was to provide a bridge between federally recognized tribes and DSHS by ensuring their government-to-government relationship was honored in all major policy and operations decisions.

Also in 1991, a joint effort between Washington State federally recognized tribes, national experts, and the child welfare agency led to the creation of the first comprehensive ICW policies and procedures manual. This detailed manual was based on the original 1987 Tribal-State ICWA agreement and provided detailed instructions on when and how ICWA applied to:

- Child welfare cases.
- The role of child welfare employees.
- The tribe's role throughout the life of cases.

In 2011, after years of advocacy from Washington State federally recognized tribes and the child welfare agency, the legislature passed the WICWA. This act protects the essential tribal relations and best interests of Indian children by promoting practices aligned with ICWA. It also protects the rights of federally recognized tribes in child welfare proceedings, aims to prevent the unnecessary out-of-home placement of Indian children, and promotes better compliance with ICWA in Washington State courts and child welfare processes. At the time, Washington State was one of only a handful of states to have a state Indian child welfare act.

In 2015, the BIA released an updated version of its non-binding Guidelines partly in response to the 2013 United State Supreme Court Case *Adoptive Couple v. Baby Girl*. Then in 2016, it released binding federal regulations and a third set of updated guidelines. Also, that year, DSHS significantly revised its ICW policies and procedures manual to align with the federal regulations in a straightforward, approachable, and practical manner for caseworkers and tribal ICW workers.

On Feb. 18, 2016, Governor Jay Inslee issued an executive order establishing the Washington State Blue Ribbon Commission on Delivery of Services to Children and Families. His executive order directed the Blue Ribbon Commission to recommend an organizational structure for a new department focused solely on children and families. It included key tribal leaders who helped shape the transition from DSHS to DCYF while preserving and prioritizing the government-to-government relationship between DCYF and Washington State federally recognized tribes. It was also this year that the ICW policies were revised. The policy revisions were completed through collaboration with tribes and RAIOs. When the revisions were complete and approved, formal consultation with the tribal delegates occurred.

On July 1, 2018, the Children's Administration of DSHS transitioned to the newly established DCYF. At that time, the Office of Tribal Relations (OTR), was created within DCYF to provide similar guidance and services as those OIP provides DSHS. Currently, OTR reports directly to the DCYF Secretary. OTR coordinates efforts with Washington State federally recognized tribes and RAIOs to address the collective service needs of American Indians and Alaska children and families served by DCYF in Washington State.

In 2018, after two years of collaboration with the tribes, DCYF developed the DCYF Administrative 10.03 Tribal Consultation policy to mirror the original DSHS Administrative American Indian policy. This policy provides a framework to ensure DCYF upholds its commitment to government-to-government relationships with the Washington State federally recognized tribes and RAIOs. DCYF must comply with the ICW policies when working with Indian children and families.

In 2020 and 2021, the Washington Supreme Court issued its opinion on *Matter of Dependency of Z.J.G.* and *Matter of Dependency of G.J.A.*, respectively, drawing attention to the importance of tribal-state collaboration, ICWA compliance, and comprehensive and clear ICW policies and procedures. In response to these court decisions, DCYF initiated revision of the ICW policy and procedure manual.

Currently, OTR has employees who work closely with each region and the tribes so that Indian children and families receive culturally relevant services, ICWA and WICWA are followed, and tribes are active partners in child welfare cases and DCYF policy decisions. DCYF has active Tribal/State MOAs with many federally recognized tribes. These Tribal/State MOAs outline the roles and responsibilities of DCYF and federally recognized tribes when coordinating on cases involving children who are or may be Indian. Coordination is tailored to the specifics of each

individual tribe to promote the government-to-government relationship in individual case decisions.

Washington State and the Washington State federally recognized tribes have strong historic and on-going partnerships and collaboration. It is this work that has led to the Washington State's child welfare system gaining recognition for innovation and its reputation as a trend setter for strong Indian Child Welfare practices. It is the goal of DCYF that these partnerships and this collaborative spirit be reflected in these policies and procedures and our day-to-day practices.

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