



Administrative Policy

Chapter 10: Government-to-Government Relations 10.03: Tribal Consultation Policy

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Revised Date:

Sunset Review Date: July 30, 2022

Approved by: Ross Hunter, Secretary

Purpose

The purpose of this policy is to direct the procedures that reflect the government-to-government relationship of Indian tribes and the Department of Children, Youth, and Families (DCYF).

Authorizing Sources History

The federal government acknowledges the unique status of tribal governments in its founding documents and laws. Many examples include, but are not limited to: (1) Article 1, Section 8, of the [United States Constitution](#); (2) the [Elementary and Secondary Education Act of 1965](#); (3) the [Indian Self-Determination and Education Assistance Act of 1975](#); and (4) the [federal Indian Child Welfare Act of 1978](#).

Washington State recognizes the unique cultural and legal status of tribal governments. Indian tribes have the authority to, among other things, govern their people and their land; define their own tribal membership criteria; create tribal legislation, law enforcement, and court systems; and to impose taxes in certain situations. Based on this recognition, DCYF:

1. Follows a government-to-government relationship in seeking consultation and participation by representatives of tribal governments in policy development and service program activities in a manner that complies with [Chapter 43.376 RCW](#) and the [Washington State 1989 Centennial Accord](#).
2. Recognizes the [Centennial Accord](#) was executed between Washington state and the Indian tribes, in order to better achieve mutual goals through an improved relationship between their sovereign governments. The [Centennial Accord](#) provides a framework for the government-to-government relationship and its implementation.
3. Recognizes that current federal law requires states to consult, collaborate, and/or coordinate with Indian tribes in the development or implementation of their state plans for child welfare, early learning, and juvenile justice. In this paragraph, “consult, collaborate, or coordinate” have the same meaning as in the federal laws governing these state plans, which is different from the definitions of these words in this policy.

Scope

This policy applies to DCYF employees.



Laws

[RCW 43.376](#) Government to Government Relationship with Indian Tribes
[Washington State 1989 Centennial Accord](#)

Policy

1. Government-to-Government Principles
 - a. DCYF recognizes, honors, and supports consultation with Indian tribes on a government-to-government basis.
 - b. DCYF employees must:
 - i. Follow Washington State authority and DCYF policies and procedures.
 - ii. Extend the full benefit of this policy to all Indian tribes regardless of the degree of participation of any Indian tribe.
 - iii. Recognize each Indian tribe is culturally and administratively unique.
 - iv. Acknowledge tribal customs and religious practices.
 - c. This policy does not waive, alter, or diminish tribal sovereignty.
 - d. Per the [Washington State 1989 Centennial Accord](#), DCYF recognizes the rights of Indian tribes to bring their issues and needs to the direct attention of the governor at any time.
 - e. DCYF must engage in consultation with Indian tribes in the development of policies, agreements, and program implementation that directly affect Indian Tribes.
 - f. DCYF must invite representatives from Indian tribes as part of its employee interview panels for key identified positions.
 - g. DCYF must ensure that its employees in key identified positions are trained according to [RCW 43.376.040](#).
 - h. When external circumstances or deadlines prevent DCYF from engaging in tribal consultation before making a decision or taking action that directly impacts one or more Indian tribes, DCYF must work with the impacted tribes to address any consequences.
2. Annual Action Plans and Year in Review Progress Reports
 - a. The DCYF Office of Tribal Relations (OTR) must:
 - i. Establish a documented plan of accountability with Indian tribes and Recognized American Indian Organization (RAIOs) to develop individual or regional Annual Action Plans and Year in Review Progress Reports. The Annual Action Plans and Progress Reports must:
 - A. Include statewide performance measures as identified and agreed to by DCYF headquarters, regions, Indian tribes, and RAIOs.
 - B. Commit to action items that are consistent with Washington State authority, and DCYF policies.



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- C. Be submitted in a format or template that is periodically agreed upon between DCYF, Indian tribes, and RAIOS.
 - ii. Submit the draft Annual Action Plan, and Year in Review Progress Report to DCYF leadership by March of each year.
 - iii. Receive finalized Annual Action Plan and Year in Review Progress Reports by April of each year.
 - iv. Conduct quarterly evaluations of the Annual Action Plans and Year in Review Progress Reports.
 - v. Evaluate progress by the DCYF regions and identify outstanding issues.
 - vi. Provide updates to DCYF executive leadership and the Tribal Policy Advisory Committee (TPAC) to:
 - A. Identify issues between DCYF and the Indian tribes.
 - B. Discuss strategies for addressing the identified issues.
 - b. The DCYF secretary, tribal leaders, and RAIOS directors must review and approve their respective Annual Action Plan and Year in Review Progress Report.
 - i. All Annual Action Plans and Year in Review Progress Reports must be consistent with DCYF policy, and federal and Washington state laws.
 - ii. Any changes made by the tribe, RAIOS, or DCYF must be communicated to the other party and mutually agreed upon.
 - iii. Plans will be posted on the DCYF tribal resources website.
 - c. The DCYF secretary or designee, must work in cooperation and coordination with the Governor's Office of Indian Affairs. DCYF must submit an annual report and update to the GOIA by April 30 of each year per [RCW 43.376.020](#).
3. Consultation with Indian Tribes
 - a. DCYF, Indian tribes, or TPAC may request consultation, which may include the round table process.
 - b. In advance of consultation, the appropriate TPAC subcommittees (Early Learning, Child Welfare, Juvenile Justice) hold the round table to determine the scope of the situation. When matters with statewide implications are resolved through the round table process, DCYF distributes the resolution to Indian tribes and RAIOS. Resolution of a matter through the round table process does not preclude the matter from proceeding to consultation.
 - c. Consultation has the goal of considering all views and reaching consensus. Consultation will occur for:
 - i. Statewide or regional issues that directly impact one or more Indian tribes.
 - ii. A proposed change to existing services or implementation of services that directly impacts one or more tribal governments.
 - iii. A proposed change to policy, procedures, or process that directly impacts one or more tribal governments.
 - iv. A proposed change that impacts DCYF tribal child welfare, early learning, or juvenile justice fund distribution methodology.
 - d. Consultation is an official process between the highest authorities between two governments and has the following principles:



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- i. The expectation is that the DCYF secretary and tribal council members attend.
 - ii. Should the highest authorities of either government not be present, each authority will delegate a representative to speak and make decisions on his or her behalf at the consultation.
 - iii. Tribal councils may send a letter to the DCYF to designate their official delegate for the consultation.
 - iv. The DCYF secretary must send a letter informing the Indian tribes of the official delegate for the consultation.
4. Consultation Communication Procedures
 - a. When consultation is requested DCYF must:
 - i. Mail and email an invitation to tribal leaders for their participation.
 - ii. Email the invitation to participate to delegates and other identified employees as follows:
 - A. An initial invite forty-five to sixty days before consultation
 - B. A reminder invitation fifteen to thirty days before consultation
 - iii. Include in the invitation a clear description of the nature of the issues, and all related documents or statements.
 - b. Washington State and Indian tribes can attend and participate in the consultation through any of the following methods:
 - i. In person
 - ii. By video conference or other face-to-face technology
 - iii. Another mutually agreed upon method
 - c. When the consultation is completed, DCYF must:
 - i. Respond to all tribal decisions and recommendations made during the consultation.
 - ii. Send the completed response to the tribal leaders by mail and to the tribal delegates or representatives, TPAC, RAIOS, DCYF secretary, DCYF leadership and other appropriate DCYF employees by email.
 - iii. Implement and monitor necessary actions.
5. Tribal Policy Advisory Committee (TPAC)
 - a. The TPAC is comprised of representatives from the Indian tribes and RAIOS. Indian tribes and RAIOS select committee representatives who may serve on subcommittees for child welfare, early learning, and juvenile justice.
 - b. The TPAC and its subcommittees:
 - i. Primarily focus on DCYF program and administrative policies that directly affect Indian tribes.
 - ii. Identify potential issues for round table and consultation.
 - iii. Guide implementation of the DCYF Administrative Policy Chapter 10.03, and the [Centennial Accord](#). TPAC subcommittees can bring recommendations to TPAC should an issue arise regarding the implementation of the policy or the [Centennial Accord](#).
 - c. The DCYF OTR provides technical support to the TPAC and its subcommittees.



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- d. DCYF regional or headquarters leadership employees must put forward agenda items to the OTR for TPAC meetings or subcommittee meetings to seek input from Indian tribes and RAIOs. Example agenda items may include:
 - i. New or amended policies and procedures that impact tribal members living on or off reservation.
 - ii. Changes to the Revised Code of Washington (RCW) or Washington Administrative Code (WAC) that will impact tribal reservation programs or services delivery to Indian children and families.
 - iii. Training on the federal and Washington state Indian Child Welfare Acts.
6. Dispute Resolution Process
Because Indian tribes have tribal sovereignty, when consultation alone has not been successful in resolving an issue, Indian tribes have the authority to raise the issue to a higher or separate decision making authority, including the governor.
7. Duties and Responsibilities
 - a. The DCYF secretary or designee, must:
 - i. Review the recommendations and decisions made at each tribal consultation, then communicate the final DCYF recommendations and decisions with each Tribe and RAIIO.
 - ii. Where appropriate, implement the recommendations from the consultation within the realm of his or her authority, and provide periodic updates to the governor.
 - iii. Consider seeking legislative support for Indian tribes' and RAIOs' programs and services when submitting budget request to the Office of Financial Management (OFM) and submitting legislative proposals related to child welfare, early learning, and juvenile justice.
 - iv. Ensure the DCYF OTR and regions work with Indian tribes and RAIOs to:
 - A. Assess unmet needs.
 - B. Identify service gaps.
 - C. Address issues within the realm of his or her authority.
 - v. Present the DCYF Annual Action Plans and Year in Review Progress Reports each year to the governor.
 - vi. Consult with Indian tribes and confer with RAIOs before making substantive changes to DCYF Government to Government Administrative Policy Chapter 10.03.
 - b. The DCYF OTR must:
 - i. Advocate for the delivery of DCYF services that are of high quality and culturally sensitive and ensure Indian tribes can access DCYF services in a timely manner.
 - ii. Communicate with Indian tribes by:
 - A. Read-receipt email
 - B. United States Postal Service for official documents, upon request and when preferred by the tribe
 - C. Posting documents on the DCYF Tribal Resources webpage



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- iii. Coordinate, monitor, and assess the relationship between DCYF, the Indian tribes and RAIOS.
- iv. Develop memoranda of agreement or understanding (MOA or MOU) with Indian tribes that choose to enter into such an agreement. A tribe has the sole discretion to decide whether to enter into an MOA or MOU with DCYF. DCYF reserves signing authority for these agreements for the secretary or designee.
- v. Facilitate DCYF communications and consultations on an ongoing basis with Indian tribes and RAIOS to thoroughly consider all the suggestions and recommendations.
- vi. Include consideration of resources, including state funds, contracts, or grants, to support planning activities, functions, and goals when submitting budget requests to the secretary for DCYF budget submittal to OFM.
- vii. Identify federal waivers or exemptions to DCYF state plans when they are resubmitted, updated, or modified to promote and enhance tribal self-determination and self-governance. Said waivers and exemptions must have been identified in consultation with Indian tribes, RAIOS and TPAC.
- viii. In collaboration with the DCYF secretary, sponsor and participate in an annual TPAC meeting to present Annual Action Plans and Year in Review Progress Reports.
- ix. Inform and seek input from TPAC when DCYF employees are developing policies and procedures that directly impact Indian tribes or RAIOS.
- x. Maintain distribution lists for:
 - A. Tribal chairs and delegates
 - B. Child Welfare tribal employees
 - C. Early Learning tribal employees
 - D. Juvenile Rehabilitation tribal employees
- xi. Bring issues and concerns raised by Indian tribes and RAIOS about access to DCYF services to the attention of the appropriate DCYF office and recommend specific actions to resolve issues in compliance with this policy.
- xii. Provide employees support to the DCYF TPAC subcommittees for Child Welfare, Early Learning, and Juvenile Justice.
- xiii. Provide ongoing training, e.g., communication and consultation procedures and information on implementing this policy to DCYF employees, tribal employees, and RAIOS.
- xiv. Work with DCYF administrators and Indian tribes to resolve issues based on the DCYF secretary's and leadership's reviews of the regional Annual Action Plans and Year in Review Progress Reports.

Definitions



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Annual Action Plan and Year in Review Progress Report means the DCYF Administrative Policy Chapter 10.03 matrix submitted annually to the DCYF OTR to record the work DCYF is doing with the Indian tribes and RAIOS in each region.

Confer or Conferring means to engage in an open and free exchange of information and opinions that leads to mutual understanding and comprehension and emphasizes trust, respect, and shared responsibility.

Consultation or consult means the procedure for meaningful and timely input by tribal officials in the development of DCYF policies, procedures, and service program activities that have direct tribal implications. It is a vital piece of the government-to-government relationship.

Indian Tribe or Tribe means any federally recognized Indian tribe whose traditional lands and territories included parts of Washington.

Government-to-Government means the recognition of, and respect for, the sovereign status of Washington state and the inherent sovereign status of Indian tribes. This relationship enhances and improves communications between the two parties and facilitates the resolution of issues.

Key Identified Positions means DCYF managers and employees in positions that have regional or statewide decision-making or policy-changing authority that directly impacts tribal relations.

Office of Tribal Relations (OTR) means the office and employees who report to the DCYF secretary and are responsible for coordinating with Indian tribes and RAIOS, in order to ensure equity and parity by Washington State in meeting the service needs of the members of Indian tribes.

Recognized American Indian Organizations (RAIOS) means organizations recognized in the DCYF TPAC bylaws. These organizations provide services to both general community citizens and those who are also citizens of a federally recognized tribe. RAIOS may have contracts with DCYF and attend TPAC committee and sub-committee meetings.

Round Table means the process used for discussion, problem resolution, and preparation for consultation. The participants may have specialized knowledge to help support the process and identify solutions.

Tribal refers to one or more Indian tribes.

Tribal Policy Advisory Committee (TPAC) means the committee composed of a tribal representative or delegate from each Indian tribe and the RAIOS. TPAC does not have the authority or power to infringe or jeopardize the sovereignty of any federally recognized tribe.



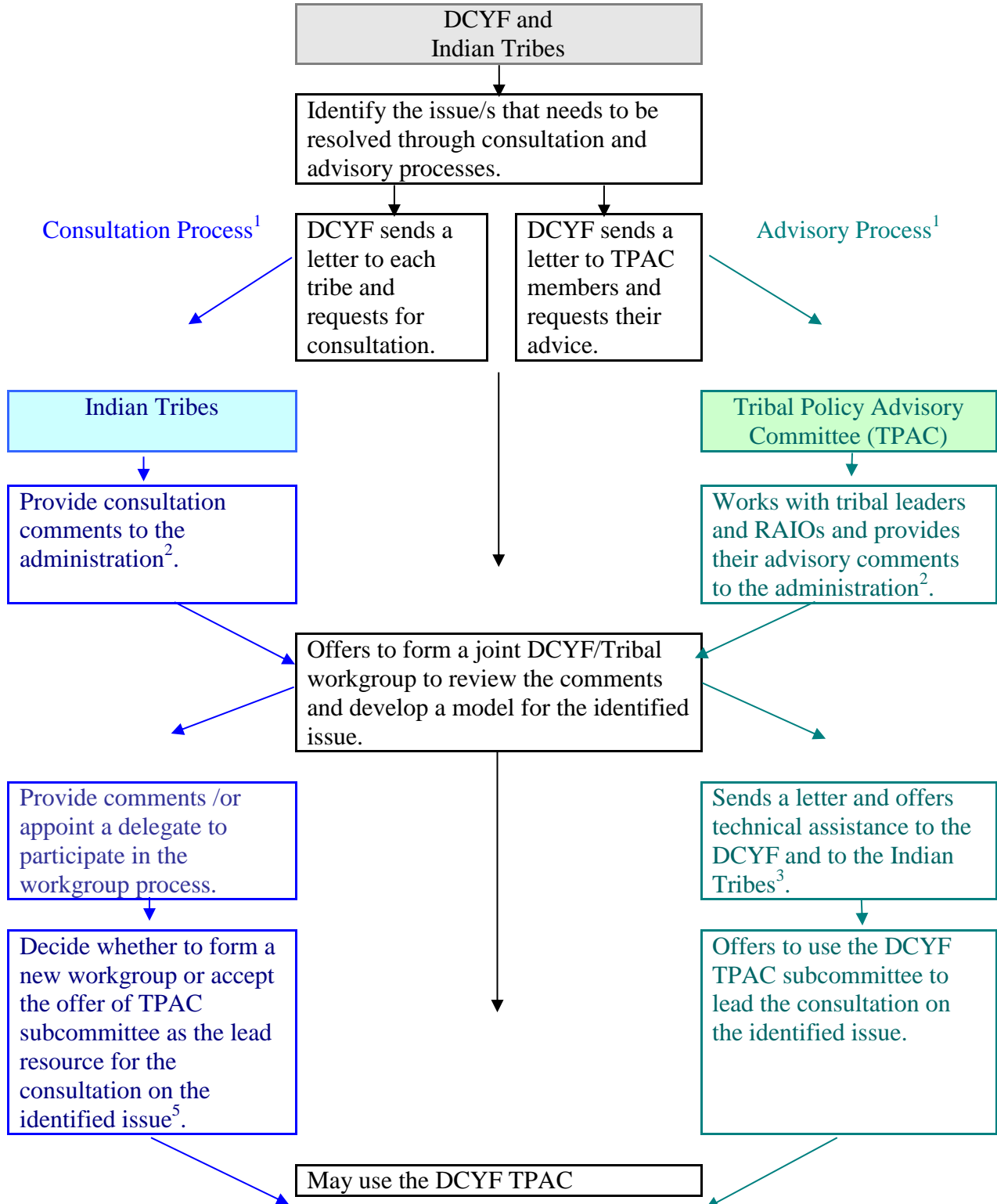
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Tribal Sovereignty means the inherent right or power of Indian tribes to self-govern, have the legislative, executive, and judicial power to make and enforce civil and criminal laws upon tribal citizens, and to establish courts and other forums for resolution of disputes.



Consultation Flowchart





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subcommittee as the forum for the
workgroup process⁴.



Reports the outcomes of the
consultation to the Indian Tribes,
DCYF Secretary, and TPAC.

Footnotes:

1. The consultation with Indian tribes and RAIOS can occur while TPAC is performing their advisory work.
2. Sometimes it may be the same tribal representative who provides the consultation comments on behalf of the tribe, and prepares the advisory comments as a TPAC delegate.
3. The TPAC letter will include a list of the current TPAC delegates and subcommittee members. This will make it easier for Tribal Leaders to identify people who are already working on the issues through TPAC.
4. Many Indian tribes and RAIOS have already designated delegates to TPAC, and the existing subcommittee could be the lead resource for Indian tribes and RAIOS to work on the joint DCYF/Tribal model development.
5. Some Indian tribes and RAIOS may prefer to use their existing TPAC delegates and work through the TPA subcommittee rather than having duplicate meetings on the same issue.