


To: DCF Area Administrators  
Child Placing Agency Directors  
Child Welfare Agency Directors  
County Departments of Community Programs Directors  
County Departments of Human Services Directors  
County Departments of Social Services Directors  
Group Home Providers  
Tribal Social Service/Indian Child Welfare Directors  
Private Child Placing Agencies  
Residential Care Center Providers  
Shelter Care Providers  
Tribal Chairpersons

From: Fredi-Ellen Bove   
Administrator

Re: Tribal Good Faith Negotiation Policy

## PURPOSE

This Memorandum states the Department of Children and Families policy to negotiate in good faith with any Indian tribe, tribal organization or tribal consortium in Wisconsin or another state that requests to develop an agreement with the State of Wisconsin. This memo also affirms the Department's continuing commitment to work with tribes to prioritize, refine, and advance program and process improvements with which we can better serve tribal children and their families who are served by tribal, county and state child welfare agencies.

## BACKGROUND

Consistent with the State/Tribe contract and the Tribal Consultation Policy, the Department and Tribes have a long-standing practice of good faith negotiations with one another that has resulted in prioritizing, developing, and implementing critical improvements to state and tribal child welfare systems. These efforts include, but are not limited to, development and implementation of the following initiatives:

- Training and technical assistance in the implementation of the Wisconsin Indian Child Welfare Act (WICWA) through the Best Outcomes for Indian Children Project and ongoing efforts;
- Guidelines for child welfare qualified expert witness and active efforts under WICWA;
- Revised criteria for the tribal high cost placement pool;
- A continuous quality improvement methodology of practice and outcomes of WICWA cases;
- State/Tribal Title IV-E Agreements;
- 161 Agreements and County/Tribe Memoranda of Understanding that define the roles and responsibilities of counties and Tribes; and
- Tribal eWiSACWIS Agreements.

The Department has and will continue to build on these successes to further advance its policy and contractual requirements associated with negotiating in good faith with all Indian tribes, tribal organizations, or tribal consortia interested in administering all or part of a child welfare program.

## INFORMATION SUMMARY

Consistent with the State/Tribe contract and the Tribal Consultation Policy, the Department continues its commitment to negotiate in good faith with any Indian tribe, tribal organization, or tribal consortium that requests to develop an agreement with the State that results in prioritizing, developing, and implementing improvements to state and tribal child welfare systems.

Good faith negotiations involve:

- Identifying and discussing issues in a respectful manner;
  - Collectively assigning a timeline to address identified issues
  - Delegating key Department and Tribal representatives that can assist in addressing outcomes
- Encouraging active and balanced participation from all parties;
  - Providing an atmosphere where issues can be intimately weighed regarding positive and/or negative impacts to parties
  - Ascertaining complementing or challenging approaches to Tribal or state mechanisms
  - Discussing existing processes or policies that may create barriers to identified issues
- Working to achieve consensus;
  - Identifying institutional limitations by tribal, state or federal regulations, codes or laws
  - Discussing alternative approaches that may meet desired outcomes
  - Aligning outcome to existing, approved and supported negotiated agreements or policies created by the Department and Tribal representatives and programs
- Supporting negotiation in good faith outcomes for implementation.
  - Providing and supporting findings and recommendations resulting from the combined efforts of the 'negotiating in good faith' to approving Tribal (tribal councils) and Department (Secretary) entities.

In good faith negotiations, all parties feel their voices were heard and agree to the terms of the agreement.

Tribes are invited to refine and advance this commitment by working with the Department to integrate this policy of good faith negotiations into appropriate agreements governing Tribal/State relationships, including, but not limited to the following:

- **Tribal Consultation Policy.** This policy establishes the guiding principles and procedures of government-to-government relations between DCF and tribes. This policy identifies forums, processes and timelines, and outreach responsibilities associated with collaborative, respectful communication to address program improvements affecting services to Indian children and families. This policy is available at the following website: <https://dcf.wisconsin.gov/tribalaffairs/consultation>
- **State/Tribe Contracts.** These contracts ensure the efficient management and administration of Indian Child Welfare programs and clarify the roles and responsibilities of the Tribe and the Department. Section VIII.C of the standard contract states that "either party may notify the other of conditions that require re-negotiation of this Contract...and bargain in good faith as to resolution of the conditions." The Department commits to expanding the scope of this language to also include good faith negotiations with tribes interested in establishing new agreements with the Department.
- **Title IV-E agreements.** As of the date of this memo, the Bad River, Lac du Flambeau, and Lac Courte Oreilles Tribes have concluded a Tribal /State Title IV-E Administrative agreement and are operating the agreement. Consistent with the Department's stated policy of good faith negotiation with tribes, the Department and these Tribes acted in good faith to establish the terms of the agreement and implement a reporting schedule to ensure that the Tribe maximizes reimbursement for its administrative expenses. Similarly, the Department will negotiate in good

faith with any Tribe interested in establishing a Title IV-E Agreement. Further information regarding Title IV-E opportunities available to all tribes or tribal consortia can be found at the following website: <https://dcf.wisconsin.gov/title4e/?accactive=2>

DCF continues its commitment to working respectfully and collaboratively with tribal governments to address emerging needs by refining and implementing new initiatives to improve services to Indian children and their families as outlined in the Tribal Consultation Policy. Opportunities to further discuss these policies and initiatives include the annual DCF/Tribal Consultations.

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**Title IV-E Agreements**

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Attachment: Wisconsin Tribal Relations Initiative  
<http://witribes.wi.gov/section.asp?linkid=283&locid=57>