

Minnesota 2007 Tribal/State Agreement (TSA) Requirements for Child Welfare

Module 11 Chapter 3

The TSA supports ICWA and MIFPA requirements that must be met in child welfare cases. The 2007 Agreement is a re-negotiated version of the 1998 Agreement. Re-negotiation occurred because of non-compliance with ICWA, MIFPA and the original agreement. The TSA intends to continue to improve care for Indian children and families, and to improve relations among counties and tribes in order to obtain best outcomes for Indian children. The Tribal/State Agreement was fully executed on February 22, 2007.

Key Provisions	Elements	Worker Responsibilities/Best Practices
Jurisdiction and Transfer of Jurisdiction	<ul style="list-style-type: none"> ▪ Mirrors ICWA/MIFPA ▪ Tribes have exclusive jurisdiction “over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe” or is a ward of tribal court 	<ul style="list-style-type: none"> ▪ Comply with ICWA/MIFPA ▪ Provide timely notice of intervention and court hearings ▪ Notify tribe if/when entrance to reservation is necessary ▪ Cooperate when conducting assessments/investigations ▪ Share information
Active Efforts (AE)	<ul style="list-style-type: none"> ▪ Mirrors ICWA/MIFPA ▪ Clarifies meaning & provides examples of potential active efforts ▪ Rigorous & concerted level of case work using prevailing social & cultural values, conditions & way of life to: <ul style="list-style-type: none"> ○ Preserve the child’s family ○ Prevent placement ○ Return the child as early as possible if placement occurs ▪ Continuous from contact to closure ▪ Active efforts exceed legal standard of reasonable efforts 	<ul style="list-style-type: none"> ▪ Comply with ICWA/MIFPA ▪ Acknowledge & use traditional helping & healing systems of tribe ▪ Seek guidance from, & collaborate with, the tribe to identify, secure & provide services from initial contact to closure ▪ Work with tribe & family to develop alternative plans to placement ▪ Active Efforts Examples (pgs. 9-10 of TSA for full language): <ul style="list-style-type: none"> ○ Notify tribe & request involvement at the earliest point possible; actively solicit advice throughout case ○ Request tribal representative to evaluate family circumstances, assist in case plan development, & assist in accessing tribal resources ○ Provide on-going concrete services & access to both tribal & non-tribal services ○ Arrange visitation, including transportation assistance, whenever possible, in the parent(s) or other family member’s home <ul style="list-style-type: none"> ▪ Allow unsupervised interaction whenever it is consistent with protecting the child’s safety ▪ When safety requires supervised contact, consult with tribe to

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		<p>determine and arrange most natural setting possible while ensuring safety</p> <ul style="list-style-type: none"> ○ Consult with tribe regarding availability of tribal support for family; use tribally based services whenever possible ○ Consult with extended family for help & guidance; use them as resources for the child & family; seek help from family & tribe if difficulties arise ○ Use appropriate tribal, other Indian agency & state resources for the child & family ○ Provide services to extended family members to allow them to be considered for placement of the child
Best Interests	<ul style="list-style-type: none"> ▪ Supports ICWA/MIFPA purposes ▪ No test in ICWA/MIFPA ▪ Support child’s sense of belonging to family, extended family, clan & tribe ▪ Interwoven with best interests of child’s tribe 	<ul style="list-style-type: none"> ▪ Acknowledge & respect tribal & cultural strengths ▪ Comply with & recognize importance & immediacy of family preservation ▪ Use tribal ways & strengths to preserve & maintain the family ▪ Understand the damage suffered by children if tribal identity & contact are severed
Placement Preferences	<ul style="list-style-type: none"> ▪ Tribe can specify its own order of preference if the setting is least restrictive and meets the child’s needs ▪ Mirrors ICWA/MIFPA order of preferences <ul style="list-style-type: none"> ○ Foster care/pre-adoptive placements: <ul style="list-style-type: none"> ▪ Member of child’s extended family ▪ Foster home licensed, approved, specified by tribe ▪ Indian foster home licensed or approved by authorized non-Indian licensing authority ▪ Institution for children approved by tribe or operated by Indian organization 	<ul style="list-style-type: none"> ▪ Comply with ICWA/MIFPA ▪ Use ICWA preferences if tribe does not specify a different order ▪ Place within reasonable proximity to the child’s home while accounting for any special needs of the child ▪ With tribal guidance, consider these items before placement: <ul style="list-style-type: none"> ○ How the family is structured ○ How the family can seek help ○ What family & tribal resources are available ○ What barriers the family faces that could threaten its preservation ▪ Do not seek “Good Cause Not to Follow the Placement Preferences” based solely on bonding or attachment to a foster family without the existence of any of the legally specified conditions in ICWA

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	<ul style="list-style-type: none"> ○ Adoptive placements: <ul style="list-style-type: none"> ▪ Member of child’s extended family ▪ Other members of child’s tribe ▪ Other Indian families ▪ Placement with siblings or half-siblings in non-relative, non-Indian home does not meet preference requirements ○ Child relationships are determined in regard to parents or Indian custodians, not to other children in the placement 	
Qualified Expert Witness (QEW)	<ul style="list-style-type: none"> ▪ Mirrors ICWA/MIFPA ▪ Required for out-of-home placement in foster care & permanency, including TPR ▪ Tribally designated QEW is not subject to challenge 	<ul style="list-style-type: none"> ▪ When use of a Tribally designated QEW is not possible, consider these criteria which “inform but do not supplant current law:” <ul style="list-style-type: none"> ○ Membership in, and/or experience with child’s tribe ○ Knowledge/understanding/experience of the meaning of these cornerstones of the child’s tribe: <ul style="list-style-type: none"> ▪ Membership ▪ Clan relationships & extended family responsibilities ▪ Traditional/contemporary child-rearing practices ▪ Traditional disciplinary measures ▪ Ceremonial/religious practices & cultural traditions ▪ Medicine & traditional healing practices ▪ Effects of assimilation within the tribe
Confidentiality of Records/Information	<ul style="list-style-type: none"> ▪ Supports & helps achieve purposes of ICWA/MIFPA ▪ Share confidential information with tribe 	<ul style="list-style-type: none"> ▪ Share files within 7 days of determination that county involvement may exceed 30 days and out-of-home placement could result <ul style="list-style-type: none"> ○ Continuously sharing information with tribe throughout the case & at all major decision points is ICWA/MIFPA compliance
ICWA MEPA/IEPA ASFA	<ul style="list-style-type: none"> ▪ TSA supports these federal & state laws ▪ MEPA/IEPA do not affect application of ICWA or ASFA ▪ Must comply with ICWA & ASFA ▪ ASFA does not supersede ICWA ▪ DHS regulations implementing ASFA 	

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Compliance with ICWA/MIFPA/TSA	do not supersede ICWA	<ul style="list-style-type: none"> ▪ Comply because it is best for American Indian children, families & tribes ▪ Goals of child welfare services are safety, permanency and well-being
Remedies for Non-Compliance	<ul style="list-style-type: none"> ▪ Anyone can report non-compliance ▪ Report to American Indian Ombudsperson or DHS ▪ If reported to DHS, DHS is responsible to: <ul style="list-style-type: none"> ○ Notify affected persons, county, tribe in 3 business days ○ Gather information from reporter ○ Schedule meeting or phone conference to discuss situation ○ Document resolution with copy to all involved/affected ○ Ensure confidentiality is maintained ▪ Reporter may also seek to utilize Fair Hearing Process under §256.045 	<ul style="list-style-type: none"> ▪ Provide information upon request