

STATE OF WISCONSIN
Department of Children and Families

DEPARTMENT POLICY REGARDING
CONSULTATION
WITH
WISCONSIN'S INDIAN TRIBES

April 1, 2009

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I. Introduction

The various states have a unique legal relationship with each sovereign Indian government, as affirmed and described in federal law. This relationship is set forth in the Constitution of the United States, treaties, statutes, laws, and court decisions. Wisconsin Executive Order #39, issued in February 2004, affirms the government-to-government relationship between the State of Wisconsin and each Indian government located within the State of Wisconsin.

Government-to-government relations involve respectful and cooperative communication and dealings that are designed to achieve a consensus, to the extent possible, before a decision is made or an action is taken. The goal is to implement programs in a collaborative manner. The Wisconsin Department of Children and Families (the Department) is committed to such government-to-government relations with the federally-recognized tribal governments of Wisconsin (Tribes). The Department will employ its best efforts to achieve positive outcomes from its consultation and collaboration with Tribes. The goal of this policy is to improve the planning for, delivery of, and access to programs and services for children and families by Indian governments, communities, and people. We will achieve this by developing principles of and a process for consultation on children and family policies in Wisconsin. It is for this purpose that this policy has been developed.

The Department of Children and Families is a comprehensive state agency, headed by a cabinet-level secretary. The Department has responsibility for establishing policies and providing services in a wide variety of program areas, including child welfare, child protective services, out-of-home care, child care, child support, W-2 (Wisconsin Works), and other children and family related programming.

Many of these services are provided directly through the State's legal and contractual relationships with state Temporary Assistance to Needy Families ("TANF" or "W-2") agencies, private child welfare agencies, county departments of human services or social services, child support agencies, and Job Centers. These services are also often provided by tribal agencies through a contractual relationship between the DEPARTMENT and tribal governments or tribal governments and the federal government.

Each of the federally-recognized sovereign Tribes in the State of Wisconsin is recognized by the State for its unique status, self-government, and self-determination. The Department of Children and Families respects the fundamental principles that establish and maintain the relationship between Indian governments and the Department. The Department affords Indian governments the same respect afforded to other governments.

The Governor and the Legislature transferred selected programs from the Department of Workforce Development (DWD) and the Department of Health and Family Services (now the Department of Health Services, DHS) to the Department of Children and Families effective July 1, 2008. Both DWD and DHS have had a long history of contracting with tribal governments in the State of Wisconsin. With the creation of the Department of Children and Families, cooperation and collaboration will continue to be a priority.

The Department, its partner agencies, and the Tribes have a responsibility for a variety of programs serving children and families. As residents of the State of Wisconsin, tribal members

are equally entitled to services afforded to all residents of the State. As members of a sovereign tribal nation, tribal members are also entitled to those services afforded to all members of that Tribe. Whether the services are provided through tribal agencies or directly through the Department's partner agencies, it is critical that Department of Children and Families administrators and the leadership of the Tribes located within the state, and their respective representatives, consult with one another to assure the availability and successful delivery of needed services and other assistance.

II. Objectives

The objectives of this policy are:

- A. To create a collaborative relationship to improve child welfare, child care, child support, W-2 (Wisconsin Works), and other children and family related programming for tribal communities and their members.
- B. To formalize the procedures and expectations for the Department to implement a government-to-government relationship and to foster consultation with and encourage the participation of representatives of Tribes in policy development and program activities.
- C. To promote and develop methods of consulting with Tribes and to involve their representatives in the Department decision-making process in order to assure that the needs of tribal people are met.

III. Guiding Principles

The Department is committed to improving and maintaining effective government-to-government relations with Wisconsin's Indian tribes, bands, and communities. The development of mutual understanding -- with cultural awareness, sensitivity, and responsiveness -- is necessary for effective consultation on policies and collaboration on program operations. Toward achieving this goal, the Department will utilize the following principles in its consultation with tribal governments. Integration of these principles into the Department's planning and management activities will help produce positive and desired outcomes within the children and families programs and services for Tribal community members.

- A. It is important to recognize the uniqueness of each Indian community's culture, governmental structure and processes, demographics, geography (e.g., where tribal members are located), and other factors.
- B. Consultation involves respectful and timely communication between sovereign governments in a cooperative process that strives to achieve a consensus before a decision is made or an action is taken.
- C. Working directly with Indian Tribes in a government-to-government manner will result in an effective, efficient, and sustainable consultation process.

- D. Consultation with tribal governments when developing and implementing budgets, policies and programs, legislative initiatives, regulations, and other activities that are anticipated to directly affect Indian Tribes or their members is necessary and respectful. This includes topics presented by the Tribes on which they would like consultation.
- E. Promotion of cooperation among affected parties is the best way to implement initiatives and resolve issues of mutual concern.

IV. Purpose and Methods

The State of Wisconsin, represented for purposes of this policy by its Department of Children and Families, with the concurrence of the Tribes as sovereign entities, will diligently seek to maintain an ongoing and meaningful process for communicating general concerns, program and funding priorities, respective roles in the provision of services to Tribal community members, and other high-level matters of mutual concern.

The Wisconsin Department of Children and Families, in consultation with the federally-recognized tribal governments located within the state, establishes this policy requiring Department staff to consult with tribal governments on Department policies and activities. This policy formalizes the collaborative relationship that the Department and Tribes have established in creating, contracting for, and accessing child welfare, child care, child support, W-2 (Wisconsin Works), and other children and family related programming for tribal communities and their members statewide.

A. Annual Meetings

The Secretary of the Department of Children and Families, in consultation with tribal leadership, shall assume the responsibility for scheduling an annual consultation session at which the Secretary will be present. The consultation must include invitations to, at a minimum, the following individuals or their designees:

- Chairperson, Bad River Band of Lake Superior Tribe of Chippewa Indians
- Chairperson, Forest County Potawatomi Community
- President, Ho-Chunk Nation
- Chairperson, Lac Courte Oreilles Band of Lake Superior Chippewa Indians
- President, Lac du Flambeau Band of Lake Superior Chippewa Indians
- Chairperson, Menominee Indian Tribe of Wisconsin
- Chair, Mole Lake Sokaogon Chippewa Community
- Chairperson, Oneida Tribe of Indians of Wisconsin
- Chairperson, Red Cliff Band of Lake Superior Chippewa Indians
- Chair, St. Croix Chippewa Indians of Wisconsin
- President, Stockbridge-Munsee Band of Mohican Indians
- Tribal Administrators and program staff as determined by the Tribal Leadership
- The Secretary of the Wisconsin Department of Children and Families
- Department administrators and other staff as determined by the Secretary

The agenda for and date and location of the consultation session shall be determined jointly by the Secretary and Tribal leaders identified above. The schedule will take into account the desirability of allowing adequate time during even-numbered years for development of the Department's biennial budget initiatives.

It shall be part of the consultation agenda for at least one meeting during each calendar year to review and evaluate the accomplishments and effectiveness of the previous year's action plan (see section IV.C.) and to establish mutual goals for the current year's action plan. The agenda will also include a current Department organizational chart. In addition, the Department will prepare a summary of the previous year's committees and other bodies that indicates the involvement of tribal representatives and the tribal affiliation of those representatives.

B. Other Meetings

The Secretary of the Department of Children and Families, in consultation with tribal leadership, shall assume the responsibility for scheduling additional consultation sessions at his or her discretion. In addition, any Tribal Chairperson or President may request meetings or other consultation with the Secretary or other Department representatives.

C. Annual Action Plan

The Department management shall establish, in conjunction with appropriate program staff and Department Tribal Relations Staff, an annual action plan by which this government-to-government consultation policy shall be implemented. The action plan shall include:

- **Programs:** A list of programs and services available to Tribal members, including an overview of and training on Department programs and a Department organizational chart.
- **Policy and Program Development:** Description of new or potential initiatives, programs, and policies affecting Tribes.
- **Priorities:** Prioritized topics and issues for discussion and, as necessary, resolution with the Tribes.
- **Consultation Process:** The procedures to be used to consult with Tribes on existing and new policies and programs.
- **Evaluation Process:** The process to determine the effectiveness of the action plan with respect to the consultation process and to the programmatic, fiscal, and other aspects of applicable health and human services programs identified in the action plan.

D. Training

It shall be part of consultation agendas to establish regular, ongoing training sessions for appropriate Department employees and other individuals, such as W-2 agencies, counties, and other partners. The purpose of this training is to educate Department employees and others regarding the requirements of a meaningful government-to-government relationship, including historical and cultural perspectives from the Tribes, and information about the importance of consensus building, Tribal sovereignty, Tribal government, and Tribal services. The

Department shall make every effort to involve Tribal Leaders or their designees in the development of the curriculum and provision of the training.

E. Relationship to Federal Law

No action taken in accordance with this policy shall conflict with or circumvent Federal laws, mandates, rules, or regulations governing the programs, procedures, or practices of either the Department of Children and Families or Wisconsin's federally-recognized Tribes.

V. Resolution of Issues

In any given year, specific issues affecting one or more Tribes and the Department of Children and Families may arise. These issues may be raised by either a Tribe or the Department and may occur at various levels within either party. The following process is to be used when such issues arise.

A. Initial Discussion

When an issue arises and an employee of either a Tribe or the Department contacts an employee of the other entity, they will discuss the issue and attempt to resolve it. If higher level involvement is required, the process described in Subsection V.B. will be followed.

If resolution or non-resolution of the issue would affect a Tribe or Tribes other than the Tribe involved, then further discussion must occur as described in Subsection V.C.

B. Issues Requiring Higher Level Involvement

If higher level involvement is needed, the issue will be raised to the appropriate level in a Division or the Department for resolution. Within a Division or other subunit of the Department, the appropriate manager will assume responsibility for contacting the Tribe and attempting to resolve the issue. Resolution shall be sought through the Division hierarchy prior to being referred to the Department level. Should resolution not occur at the Division level and it is advanced to the Department level, the Tribal Affairs staff, with the support and assistance of the Secretary's Office, will facilitate contact between the appropriate Department staff or managers and the Tribe. Communication between those parties shall occur as soon as is reasonably possible, subject to Subsection D, to determine if the issue can be resolved. If the issue is resolved, no further action is required. If the issue cannot be resolved at the Department level, the Tribe will be informed of the mechanism to raise the issue with the Division of Intergovernmental Affairs in the Department of Administration.

C. Issues Affecting More Than One Tribe

If it is determined that resolution or non-resolution of the issue will affect more Tribes than just the Tribe presently involved in the discussion, the Department program representative who is involved with the issue will, after consultation with the Department Tribal Affairs staff, make contact with the Tribe to inform them of the change in focus. A designee of the Department Secretary and the Tribal Affairs staff shall notify all affected Tribes and initiate the resolution

process. Communication involving all of the potentially affected parties will occur in a timely manner and will be facilitated by the Department Tribal Affairs staff and the designee of the Department Secretary.

If the issue is resolved through agreement of the involved parties, no further action is required. If the issue cannot be resolved, then the issue shall be raised to higher level authorities as described in Subsection V.B.

D. Timeliness of Response

Within ten (10) business days after receiving contact from a tribal representative, the Department representative shall respond to the tribal representative with a resolution of the issue or a projected timeframe for resolution of the issue. The parties may negotiate the timeframe for resolution.

VI. Outreach to Tribal Governments on Committees and Workgroups

During the normal course of business, it is often necessary for the Department to establish committees, councils, workgroups, or similar bodies to provide advice and recommendations to the Department. Management of the Department, in creating such committees, councils, workgroups, or similar bodies that deal with policies or programs affecting tribal governments or tribal members, shall inform tribal Chairpersons/Presidents, in writing, of their creation. The person who will chair or facilitate the body shall communicate with all Tribes regarding any proposed policies or programs under consideration in order to solicit tribal input.

A. Long-Term and Ongoing Basis

If the Department or any Division establishes any ongoing or long-term advisory committee, commission, or similar body, the Secretary or appropriate Division Administrator shall notify the Tribal Chair or President of each Tribe, in writing, of the nature and purpose of the body, the anticipated outcome(s), the qualifications for the representative desired, what expenses will be reimbursed, and the time commitment required for serving on the body. The Department will defer to the Tribe's determination of whether or not to designate a person to serve on the body. When the Department is advised by a committee or council created by state statute, executive order, or other mechanism with appointments made by the Governor or other appointing authorities outside of the Department, the Department will give similar notice to each Tribal Chair or President allowing the opportunity for him or her to identify interest in appointment consideration, unless some other appointing process or authority is mandated.

If the body requires tribal representation, but the size of the body, as determined by the Department, precludes a representative from each tribe, then the Department will request representation from the Inter-Tribal Child Welfare Directors Committee. The Department Tribal Affairs staff will maintain an ongoing list of tribal representatives and their tribal affiliation. When more than one tribe indicates interest in being represented, the Department shall allow representatives of at least two tribes to participate.

B. Short-Term and Ad Hoc Bodies

If the Department, a Division, or a subunit of a Division establishes any external ad hoc committee or workgroup which affects tribes or tribal members, the appropriate individual in the Department, Division, or Division subunit shall contact the tribal program directors in the program that are affected by the work of the committee or workgroup. The contact shall initially be in writing and shall include a description of the nature and purpose of the body, the anticipated outcome, the qualifications of the representative desired, what expenses will be reimbursed, and the time commitment required for serving on the body. The tribal program directors, after any necessary consultation, will determine whether or not to appoint a person to serve on the committee or workgroup. If the body requires tribal representation, but the size of the body, as determined by the Department, precludes a representative from each tribe, then the Department will request representation from the Inter-Tribal Child Welfare Directors Committee. The Department Tribal Affairs staff will maintain an ongoing list of tribal representatives and their tribal affiliation. When more than one tribe indicates interest in being represented, the Department shall allow representatives of at least two tribes to participate.

GLOSSARY

For purposes of this consultation policy, the following terms and definitions will apply:

“Child support” means obligations owed by parents to their children and maintenance obligations owed to spouses or former spouses with whom the children reside in this state.

“Child welfare” means the system of services and programs for children and families who may have issues related to safety, special care and treatment, or other assistance designed to assure the well-being of children.

“Consultation” means a process used to facilitate communication, interaction, and the exchange of views and perspectives between the Department of Children and Families and each of the federally-recognized Tribes in Wisconsin.

“County department of human services” means an agency that is part of a county governmental structure with the powers and duties described in s. 46.23, Stats.

“County department of social services” means an agency that is part of a county governmental structure with the powers and duties described in ss. 46.215 or 46.22, Stats.

“Cultural awareness and sensitivity” means having due knowledge of and regard for the behavior patterns, civilization, customs, arts, beliefs, institutions, and all other achievements and manifestations of human work and thought as expressed in a particular community.

“Department” or *“Department”* means the Wisconsin Department of Children and Families.

“Division” means a subunit of the DEPARTMENT responsible for the management, administration, and provision of programs and services in specific program areas. For purposes of this agreement, “Division” relates to one or more of the following divisions: Prevention and Service Integration, Early Care and Education, Safety and Permanence, Family and Economic Security, and Enterprise Solutions.

“Government-to-government” means communication and dealings between sovereign governments, their agencies, and other official entities.

“Sovereign” means independent of the control of another government or governments.

“Tribe” or *“Tribal government”* means a sovereign government of an Indian people, embracing and occupying lands and territory, and having jurisdiction over same, lying within the geographical boundaries of the State of Wisconsin, which sovereignty is recognized by the Government of the United States and subject to the Constitution, laws, and treaties of the United States, which also may be known as a “federally-recognized Indian Tribe.”

“Wisconsin Works (W-2)” means the state-administered Temporary Assistance for Needy Families (TANF) program which replaced Aid to Families with Dependent Children.