

Juvenile Justice Services Intergovernmental
Agreement By and Between the New Mexico
Children, Youth and Families Department and the
Pueblo of Jemez

**JUVENILE JUSTICE SERVICES INTERGOVERNMENTAL AGREEMENT
BETWEEN THE NEW MEXICO CHILDREN, YOUTH AND FAMILIES
DEPARTMENT AND THE PUEBLO OF JEMEZ**

This Intergovernmental Agreement (IGA) is between the State of New Mexico acting through its Children, Youth and Families Department and the Pueblo of Jemez, a Federally recognized Indian Tribe.

I. PURPOSE AND POLICY

A. The Pueblo of Jemez and the Children Youth and Families Department (CYFD) agree that:

1. The primary purpose of this Agreement is to protect and further the best interests of any child coming within the jurisdiction of the Pueblo of Jemez Children's Court as having committed an offense within the jurisdiction of the Pueblo of Jemez in violation of the Pueblo of Jemez Children's Code.
2. The supervision and rehabilitation of children and youth within the jurisdiction of the Pueblo of Jemez are the primary concerns when providing services under this agreement; and
3. Training and technical assistance between the State of New Mexico and the Pueblo of Jemez is important for implementation of this agreement.

B. The Pueblo and CYFD recognize that:

1. There is no resource that is more vital to the continued existence and integrity of the Pueblo of Jemez than its children;
2. CYFD has a direct interest in protecting Native American culture and encouraging the cultural diversity of the citizens of the State of New Mexico;
3. The citizens of the Pueblo of Jemez living on the Pueblo of Jemez Reservation are citizens of the State of New Mexico;
4. This Agreement is entered into under Pueblo of Jemez Children's Code (JCC §11-1-3 (D) et seq.) and the New Mexico Children's Code (NMSA 32A-1 et seq.), and in accordance with the State government-to-government policy and Executive Order 2005-004.
5. This Agreement is predicated on a government to government relationship between the State of New Mexico and the Pueblo of Jemez in a spirit of cooperation, coordination, communication, collaboration and good will;
6. Being able to access State juvenile justice services for youth coming within the jurisdiction of the Pueblo of Jemez Children's Court is of critical interest to the Pueblo;
7. This agreement shall be construed in the spirit of cooperation and in a manner that protects and promotes the best interest of Indian children and the security of Indian families on the Pueblo of Jemez reservation.

II. DEFINITIONS

- A. **“Care, control and supervision”** means that the CYFD or any of its programs has the authority subject to the terms and conditions of a valid and enforceable Tribal Court Order to determine place and duration of commitment, methods of treatment, access to ancillary services during CYFD placement, visiting hours, time and conditions for temporary releases, and final release recommendations except as provided for under Section V of this agreement, and includes the power to authorize medical, dental, behavioral health, and educational services and to transport the child to receive those services.
- B. **“Child placed in a state facility”** means a child, 14 to 18 years of age, over which care control and supervision has been granted to CYFD by an order of the Pueblo of Jemez Children’s Court.
- C. **“Coming within jurisdiction”** means that the Pueblo of Jemez has the legal authority to exercise jurisdiction over the individual or the matter in question.
- D. **“Delinquency finding”** means a finding by a Pueblo of Jemez Children’s Court Judge that an Indian child committed an act that is designated as a crime under the law when committed by an adult.
- E. **“FACTS”** means the CYFD Family Automated Client Tracking System.
- F. **“Good faith effort”** means a timely and diligent effort to promote collaboration, communication and cooperation and to promote the purposes of this Intergovernmental Agreement between the CYFD and the Pueblo of Jemez.
- G. **“HIPAA”** refers to the Health Insurance Portability and Accountability Act Pub. L. 104-191, 110 Stat. 1936 and rules promulgated under the Act.
- H. **“Indian child”** means a person less than 18 years of age who is subject to the jurisdiction of the Pueblo of Jemez Children’s Court.
- I. **“The Pueblo”** refers to the Pueblo of Jemez.
- J. **“State Facility”** refers to a facility operated by, or on behalf of CYFD’s juvenile justice services, or any other facility or location designated by the juvenile justice services’ director to house or provide care to clients committed to the custody of CYFD
- K. **“Temporary Release”** means leave from the facility pursuant to a valid and enforceable Jemez Children’s Court order that designates time for departure and return.
- J. **“Tribal Court Order”** means an order or document issued and signed by the Pueblo of Jemez Children’s Court Judge.

III. GENERAL PROVISIONS

The Children, Youth, and Families Department and the Pueblo of Jemez acknowledge that this Agreement binds them and their successors should the duties and responsibilities of CYFD and the Pueblo be delegated or transferred by their respective governments.

- A. This Agreement applies to any Indian child placed in a state facility seeking resources of the State of New Mexico by an action of the Pueblo of Jemez Children's Court through a Tribal Court order pursuant to NMSA §32A-1-8.E.
- B. CYFD will follow the statutory confidentiality restrictions of the New Mexico Children's Code and HIPAA requirements in the performance of its responsibilities under this Agreement.

The Pueblo will follow the confidentiality restrictions of the Pueblo of Jemez Children's Code and Federal Privacy Act, 5 U.S.C. Section 552(a), HIPAA requirements and pertinent CYFD and Pueblo policies in performance of its responsibilities under this Agreement.

- C. CYFD and the Pueblo recognize that when an Indian child is placed in a state facility by action of the Pueblo of Jemez Children's Court seeking the State's resources, the free flow of information between CYFD and the Pueblo is proper and necessary to the administration of juvenile justice and is in the best interests of the Indian child. CYFD shall make information, reports and records relating to an Indian child within the jurisdiction of the Pueblo of Jemez available to the Pueblo to the extent authorized by the New Mexico Children's Code, CYFD policy, and other state and federal confidentiality statutes and administrative rules. The Pueblo of Jemez Children's Court shall make information, reports and records relating to an Indian child on the Pueblo of Jemez reservation available to the CYFD to the extent authorized by the Pueblo of Jemez Children's Code, tribal policy, and other federal confidentiality statutes and administrative rules.
- D. CYFD and the Pueblo acknowledge that the disclosure of Pueblo alcohol or drug abuse treatment records is governed exclusively by federal law and also by state law, in the case of CYFD records.
- E. The CYFD Juvenile Justice Services staff will testify when necessary in the Pueblo of Jemez Children's Court upon issuance of a court order from the Pueblo of Jemez Children's Court. Appropriate staff of the Pueblo will testify when necessary in state court upon issuance of a letter requesting appearance by CYFD.
- F. It is mutually agreed that there shall be established a Coordination Committee of representatives of CYFD and the Pueblo that will meet quarterly or as needed to address such issues as:
 - 1. Coordination and communication between parties;
 - 2. Interpretation of this Agreement;

3. Review of policies and procedures;
 4. Caseload trends and their implications;
 5. Matters of mutual concern;
 6. Pueblo of Jemez customs and laws;
 7. Federal, State, or Tribal laws and regulations; and
 8. Other issues that may arise as deemed appropriate.
- G. The Pueblo shall be placed on the CYFD mailing list of proposed rule changes and provided notice of proposed rule changes as provided in CYFD administrative rules. For the purpose of this section, the Pueblo's General Counsel will be the designated contact. The Pueblo and CYFD will update contact information and mailing lists on a periodic basis.
- H. CYFD shall designate a liaison person in the CYFD administration who will be the primary point of contact with the Pueblo regarding CYFD rules and policies and issues related to implementation of this Agreement. The CYFD liaison may be contacted at:
- Native American Liaison
Children, Youth and Families Department
P.O. Drawer 5160
Santa Fe, New Mexico 87502
Telephone Number: 505-412-0093; Fax Number: 505-827-4474
- I. The Pueblo shall designate a liaison person within its administration who will be the primary point of contact with CYFD's administration regarding the Pueblo's rules, policies, financial needs and issues related to implementation of this Agreement. The Pueblo liaison may be contacted at:
- Tribal Court Administrator and/or another appointed designee
Pueblo of Jemez Children's Court
P.O. Box 100
Jemez Pueblo, NM 87024
Telephone: 575-834-7369; Fax: 575-834-9317
- J. This Agreement shall take precedence when the Agreement provides greater protection for the rights of the Indian child and role of the Pueblo than the requirements of CYFD administrative rules, provided there is no violation of applicable laws and administrative rules.

IV. SUPERVISION AND REHABILITATION SERVICES

- A. No Indian child under the jurisdiction of the Tribal Court may be committed or placed in a state facility seeking resources of CYFD without a valid court order issued and signed by the Pueblo of Jemez Children's Court judge.

- B. Any Pueblo of Jemez Children's Court order requiring the commitment or placement of a child in a state facility shall contain the following statements:
1. The basis of tribal jurisdiction over the child.
 2. A brief statement of the facts and the proceedings of the case, including a delinquency finding.
 3. The rights held by the child and the child's parents, guardian or caretaker, and which rights, if any, were waived.
 4. The transfer of the child to CYFD for an indeterminate term, not to exceed one year.
 5. A grant of care, control and supervision of the child to CYFD pursuant to Chapter 32A -1-1 et.seq. NMSA.
- C. Upon a delinquency finding by the Pueblo of Jemez Children's Court, an Indian child may be placed in a state facility for the purpose of diagnostic commitment for short-term placement up to fifteen (15) days, unless the Jemez Children's Court approves a written extension request submitted by the CYFD and is ordered upon a hearing or CYFD objects to the placement. In no instance shall the placement for diagnostic commitment exceed thirty (30) days. The term of the placement shall begin at the time of the child's arrival at the CYFD facility.
- D. Upon a delinquency finding by the Pueblo of Jemez Children's Court, an Indian child may be placed in a CYFD facility for the purpose of long-term commitment as determined by a Jemez Children's Court Order. The term of commitment shall begin at the time of the child's arrival at the CYFD facility.
- E. Tribal Court orders for non-secure environment diagnostic testing or evaluation will be provided through the CYFD Juvenile Justice Services (JJS) through written referral by the Jemez Children's Court, as available. The JJS may also provide services for written referrals submitted by the Pueblo of Jemez Probation Office, Behavioral Health, or Social Services Programs, without a tribal court order.
- F. Treatment costs associated with the rehabilitation of an Indian child within the jurisdiction of the Pueblo of Jemez will be provided through any system that the State of New Mexico uses to provide treatment to other children committed to a state facility.
- G. Responsibility for transportation of an Indian child for admission, discharge, temporary release due to a court hearing or special circumstances or events will be the responsibility of the Pueblo of Jemez. A Jemez Children's Court order must accompany the child. The CYFD will be responsible for any transportation during the child's commitment in accordance with internal policies and procedures.
- H. Cases from the Pueblo of Jemez Children's Court will be entered and kept in the CYFD FACTS records management system and in hard copy as a Master File. This information will be provided to the Jemez Children's Court in hard copy as needed and pursuant to a written request using CYFD forms.
- I. Records will be sealed and archived like any other case handled by the CYFD. Any review of a record must have prior approval from the Jemez Children's Court.

V. PERIODIC JUDICIAL REVIEW

- A. The Pueblo of Jemez Children's Court retains original jurisdiction over the matter giving rise to the CYFD placement.
- B. The Pueblo of Jemez Children's Court will conduct a review hearing for each child that has been placed under the care, control and supervision of CYFD at least every six months or as recommended by CYFD.
- C. A parent, guardian or custodian may request a reconsideration hearing on the placement of the child by the Pueblo of Jemez Children's Court in a CYFD facility under §11-3-11.5.a of the Pueblo of Jemez Children's Code.
- D. At the conclusion of the review or reconsideration hearing, the Pueblo of Jemez Children's Court may make a finding as to whether it is the best interests of the child to remain committed under the original order.
- E. In cases in which the Pueblo of Jemez Children's Court conducts a review or reconsideration hearing and finds it is not in the best interests of the child to remain in the CYFD placement of the state facility, the Jemez Children's Court may order the child's release from the state facility.
- F. The removal of a child from a state facility by action of the Jemez Children's Court does not affect the operation of this agreement.

VI. TRAINING AND TECHNICAL ASSISTANCE

- A. CYFD shall include training on this Agreement and policies and procedures developed to implement this Agreement as part of the CYFD Juvenile Justice Services and Facilities staff training plan. CYFD agrees to invite and provide notice of CYFD sponsored training to the Pueblo of Jemez. The Pueblo of Jemez agrees to invite and provide notice of tribal sponsored training to the CYFD Tribal Liaison.
- B. CYFD shall provide access to non-facility based resources to the Pueblo on an as requested basis, with such requests submitted to the CYFD Tribal Liaison. Cost of such services will either be waived or based on the cost of CYFD providing similar services to an agency of the State of New Mexico.

VII. CHANGES AND CANCELLATION OF AGREEMENT

This agreement shall continue until modified or terminated:

- A. Either party may cancel this Agreement at any time after 120 days written notice of the intent to cancel within an effective date of termination, provided that, before cancellation

of the Agreement, the parties agree to make good faith efforts to discuss, renegotiate and modify the Agreement.

- B. In the event any provision of the Agreement is held invalid or unenforceable by a court of competent jurisdiction, that holding shall not invalidate or render unenforceable any other provision of this Agreement.
- C. If the Agreement is terminated, provisions shall be made prior to the effective date of termination for the transfer of any Indian child placed in the care, control and supervision of CYFD by the Pueblo.

VIII. EFFECTIVE DATE

- A. This Agreement shall become effective upon the date all necessary signatures to this Agreement are obtained.

IX. EFFECT OF PRIOR AGREEMENTS

- A. This Agreement supersedes all prior written and oral agreements, covenants and understandings between CYFD and/or its agency offices and the Pueblo of Jemez concerning the subject matter described herein. For purposes of this Agreement, the individual signing on behalf of a party certifies that they have authority to act on behalf of the party.

X. EFFECT ON FEDERAL-TRIBAL RELATIONSHIP

- A. Nothing in this agreement shall be construed to diminish any right held by the Pueblo of Jemez by virtue of any treaty, federal or state statute or court decision, or reduce the responsibility of the United States under the Federal/Tribal trust relationship.

XI. SOVEREIGN IMMUNITY

- A. Nothing herein shall be construed as a waiver of the Pueblo of Jemez or the State of New Mexico's sovereign immunity.

