



INDIAN AFFAIRS

Advisory Committee

Sunday, December 7, 2014
5:00 – 6:30 p.m.
Room: University B
Kelly Inn, St. Cloud

TENTATIVE MEETING AGENDA

- 5:00 P.M. CALL TO ORDER**
- Welcome & Introductions
 - Pledge of Allegiance
 - Approval of September 2014 Minutes
- 5:05 P.M. Tribal State Agreement Update**
Working Group Updates- Tom Burke, and Malotte Backer
Review Draft Letter to Commissioner Jesson
- 5:40 P.M. Fond du Lac Class I Air Quality Redesignation**
Rochelle Westlund
- 6:30 P.M. ADJOURN**



PLEASE SILENCE YOUR CELL PHONE DURING THE MEETING.

2015 Tribal State Agreement Legislative Proposal Language 11/21//14

Underlined means new language ~~Strike through~~ means delete language

Minnesota Statutes 2013, section 260.753, is amended by adding a section to read:

260.763. PURPOSES.

The purposes of this act are to (1) protect the long-term interests, as defined by the tribes, of Indian children, their families as defined by law or custom, and the child’s tribe; and (2) preserve the Indian family and tribal identity, including an understanding that Indian children are damaged if family and child tribal identity and contact are denied. Indian children are the future of the tribes and vital to their very existence.

Subdivision 1. **Scope.** As used in sections 260.751 to 260.835, the following terms have the meanings given them.

Minnesota Statutes 2013, section 260.755, is amended by adding a subdivision to read:

Subd. 2. Active efforts. “Active efforts” means rigorous and concerted efforts by the local social service agency to continuously involve the child’s tribe and utilize the prevailing social and cultural values and customs of the Indian child’s tribe to preserve the Indian family and prevent removal of Indian children. Active efforts is a higher standard than reasonable efforts, but includes reasonable efforts as required by title IV-E of the Social Security Act, United States Code, Chapter 42, Sections 670 to 679C.

Minnesota Statutes 2013, section 260.755, is amended by adding a subdivision to read:

Subd. 4. Best interests of an Indian child. “Best interests of an Indian child” means compliance with the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act to preserve and maintain an Indian child’s family. The best interests of an Indian child support the child’s sense of belonging to family, extended family, and tribe. The best interests of an Indian child are interwoven with the best interests of the Indian child’s tribe.

Minnesota Statutes 2013, section 260.755, is amended to read:

Subd. 810. Indian child. “Indian child” means an individual under 18 years of age. For purposes of this chapter, chapter 256N, chapter 260 C and chapter 260D, Indian child also includes individuals under age 21 who are in foster care pursuant

to section 260C.451. Indian child is an unmarried person ~~who is under age 18 21~~ and is:

- (1) A member of an Indian tribe; or
- (2) Eligible for membership in an Indian tribe. A determination by the tribe that a child is a member or eligible for membership in the tribe is conclusive.

Minnesota Statutes 2013, section 260.755, is amended to read:

Subd. 14. 16. **Parent.** "Parent" means the biological parent of an Indian child, or any Indian person who has lawfully adopted an Indian child, including a person who has adopted a child by tribal law or custom. It does not include an unmarried father whose paternity has not been acknowledged or established. An unwed father is considered a parent upon taking any action to hold himself out as the biological father of an Indian child and includes fathers as defined by tribal law or custom.

Minnesota Statutes 2013, section 260.755, is amended by adding a subdivision to read:

Subd. 20. **Qualified Expert Witness.** "Qualified expert witness" means an individual who has been designated by the child's tribe to provide expert witness testimony in a child custody proceeding and meets the following qualifications a tribal member from the Indian child's tribe, who knows tribal customs and child-rearing practices or an expert witness who has substantial experience in the delivery of child welfare services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices of the Indian child's tribe. If a local social services is unable to identify a tribally designated person, they may utilize a professional with substantial education and experience in the area of his or her specialty and extensive knowledge of prevailing social and cultural standards and contemporary and traditional child-rearing practices of the Indian child's tribe.

Minnesota Statutes 2013, section 260.761, is amended to read:

Subdivision 1. Inquiry of Tribal Lineage. ~~Determination of Indian child's tribe.~~ ~~The local social services agency or private licensed child placing agency shall determine whether a child brought to its attention for the purposes described in this section is an Indian child and the identity of the Indian child's tribe.~~

The local social services agency or private licensed child-placing agency shall inquire of the child, parents, custodians, and other appropriate persons whether there is any reason to believe that a child brought to their attention may have lineage to an Indian tribe. The inquiry is to occur at the time the child comes to the attention of the local social services agency.

Subd. 2. Agency notice of potential out-of-home placement. Agency and court notice to tribes. ~~When a local social services agency or private child placing agency determines that an Indian child is in a dependent or other condition that could lead to an out-of-home placement and requires the continued involvement of the agency with the child for a period in excess of 30 days, the agency shall send notice of the condition and of the initial steps taken to remedy it to the Indian child's tribal social services agency within seven days of the determination. At this and any subsequent stage of its involvement with an Indian child, the agency shall, upon request, give the tribal social services agency full cooperation including access to all files concerning the child. If the files contain confidential or private data, the agency may require execution of an agreement with the tribal social services agency that the tribal social services agency shall maintain the data according to statutory provisions applicable to the data. This subdivision applies whenever the court transfers legal custody of an Indian child under section 260B.198, subdivision 1, clause (3), item (i), (ii), or (iii), following an adjudication for a misdemeanor level delinquent act.~~

The local social services agency shall provide notice to a child's tribe (s) to facilitate involvement of a child's tribe (s) at the earliest possible time.

When a local social services agency has information that a child receiving family assessment or investigation may be an Indian child, the local social service agency shall notify the tribe(s) of the family assessment or investigation according to Minnesota Statutes, Chapter 626, section 556, subdivision 10 (a) (5). Initial notice shall be by telephone and by email or facsimile. The local social service agency shall request involvement of the tribe(s) or designated tribal representative(s) to participate in evaluating the family circumstances, identifying family and tribal community resources, and developing case plans.

When a local social services agency has information that a child receiving services may be an Indian child, the local social services agency shall notify the tribe by telephone and by email or facsimile within seven (7) days of the child's full name and date of birth, biological parents full names and dates of birth, and if known, the child's grandparents full names and dates of birth, and Indian custodian's full name and date of birth so the tribe can determine if the Indian child is enrolled or eligible for membership. If the grandparent and Indian custodian information is not available within seven (7) days, the local social services agency will continue to request this information and will notify the tribe when received. Notice shall be made to all tribes where the child may have any tribal lineage. If the identity or

location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary of the Interior in like manner.

When the court has reason to believe that an Indian child has been placed in emergency protective care, the court administrator or designee, according to Minnesota Statutes, Chapter 260C, sections 151 and 152, shall, as soon as possible and before the hearing takes place, inform the child's tribe by sending notice of the date, time, and place of the emergency protective case hearing to the tribal social service agency by telephone and email or facsimile. The court shall make efforts to allow appearance by telephone for the tribal representatives, parents, and Indian custodians.

Nothing in this section is intended to hinder the local social service agencies and the court's ability to respond to an emergency. Lack of participation by the tribe(s) does not preclude the tribe(s)'s ability to intervene in services and proceedings at a later date. The tribe(s) may participate at any time.

At any stage of the local social services agency's involvement with an Indian child, the local social services agency shall, upon request, provide full cooperation to the tribal social services agency including disclosure of all data concerning the Indian child.

Nothing in this section relieves the local social service agency of notice requirements pursuant to the federal Indian Child Welfare Act.

Minnesota Statutes 2013, section 260.762, is amended by adding a section to read:

260.762. DUTY TO ENSURE PLACEMENT PREVENTION AND FAMILY REUNIFICATION; ACTIVE EFFORTS.

Active efforts sets a higher standard than reasonable efforts which includes rigorous and concerted efforts to preserve and prevent the breakup of the Indian family and when placement occurs, to reunify the Indian child to the Indian child's family at the earliest time possible.

The local social service agency shall work with the child's tribe and family to develop a plan to prevent the unnecessary removal of an Indian child while ensuring the child's safety and well-being. Active efforts require honoring tribal customs and traditions and practice-based services.

The local social services agency shall seek guidance from the Indian child's tribe when making decisions that may affect child safety and well-being and when considering removal of a child. The local social services agency shall seek guidance from the Indian child's tribe on family structure, family needs and resources, and family barriers that weaken their preservation and unity.

The local social services agency shall request participation of the Indian child's tribe at the earliest time possible and actively request the tribe's participation throughout the case.

The court shall not order out of home placement of an Indian child or permanency to an Indian child, absent a finding that active efforts have been provided to the family. In determining whether active efforts have been made by the local social services agency for the purpose of out of home placement and permanency, the court shall include whether the following activities were conducted.

- (1) The local social services agency made efforts at the earliest point possible to identify whether a child may be an Indian child, as defined by the Indian Child Welfare Act of 1978, United States Code, title 25, section 1903 and the Minnesota Indian Family Preservation Act of 1985, Chapter 260, section 755, subd.8 and to identify and request participation of the Indian child's tribe(s) at the earliest point possible and throughout the investigation or assessment, case planning, provision of services and through to case completion.
- (2) The local social services agency has requested that tribally designated representative(s) with substantial knowledge of prevailing social and cultural standards and child-rearing practices within the tribal community evaluate the family circumstances and assist in developing a case plan that uses tribal and Indian community resources.
- (3) The local social service agency has provided concrete services and access to both tribal and non-tribal services including, but not limited to, financial assistance, food, housing, health care, transportation, in-home services, community support services, and specialized services for members of the Indian child's family. Such services are to be provided in an on-going manner throughout the involvement of the local social service agency to directly assist the family in accessing and engaging in services designed to maintain the Indian family, or where out of home placement has occurred, reunify the Indian family as soon as safety can be assured.

- (4) The local social services agency notified and consulted with extended family members of the Indian child, as identified by the child, parents, or tribe. Extended family members were consulted to provide support for the child and parents, to inform the local social services agency and court as to cultural connections and family structure, to assist in identifying appropriate cultural services and supports for the child and parents, and to identify and serve as a placement resource and permanency resource for the child. If there is difficulty contacting or engaging with family members, assistance was sought through the tribe, the Minnesota Department of Human Services or other agencies with expertise in working with Indian families.
- (5) The local social services agency made efforts to support and assist extended family members, who are considered the primary placement option for an Indian child, as agreed by the local social service agency and the tribe, by addressing issues that may prevent them from becoming a licensed foster parent for the child.
- (6) The local social services agency arranged visitation to occur, whenever possible, in the home of the parent(s), Indian custodian(s), other family members, or in some other non-institutional setting, to keep the child in close contact with parents, siblings, and other relatives, regardless of their age, and to allow the child and those with whom the child is visiting to have natural and unsupervised interaction whenever consistent with protecting the child's safety. When the child's safety requires supervised visitation, consulting with tribal representative(s) to determine and arrange the most natural setting that ensures the child's safety.

Minnesota Statutes 2013, section 260.771, is amended by adding a subdivision to read:

Subd. 3. Qualified expert witness requirements.

Testimony from a qualified expert witness is required in foster care placement and termination of parental rights proceedings for an Indian child.

In any foster care placement proceeding, the court must determine by clear and convincing evidence after hearing testimony of qualified expert witness (es), that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child as defined in Indian Child Welfare Act of 1978, United States Code, title 25, section 1912 (e).

In any termination of parental rights proceedings a court must determine by evidence beyond a reasonable doubt after hearing testimony of a qualified expert witness (es), that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child as defined in Indian Child Welfare Act of 1978, United States Code, title 25, section 1912 (f).

The qualifications of a qualified expert witness designated by the child's tribe shall not be subject to challenges in Indian child custody proceedings.

The local social service agency or any other party shall use a qualified expert witness designated by the Indian child's tribe. The local social service agency or any other party must demonstrate active efforts were made to seek a tribally designated qualified expert witness.

If any party cannot offer testimony from a tribally designated qualified expert witness, the party shall insure the qualified expert witness (es) shall be:

- (1) a member of the child's tribe who is recognized by the Indian child's tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practice or
- (2) an expert witness who has substantial experience in in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and contemporary and traditional child-rearing practices within the Indian child's tribe

When a local social services agency or any party to a child custody proceeding is unable to identify a tribally designated qualified expert witness, they may utilize a professional person with substantial education and experience in the professional person's specialty, along with substantial knowledge of prevailing Native social and cultural standards and contemporary and traditional child-rearing practices

Subd. 3. 4. Transfer of proceedings.

(a) In a proceeding for: (1) the termination of parental rights; or (2) the involuntary foster care placement of an Indian child not within the jurisdiction of subdivision 1, the court, in the absence of good cause to the contrary, shall transfer the proceeding to the jurisdiction of the tribe absent objection by either parent, upon the petition of either parent, the Indian custodian, or the Indian child's tribe. The transfer is subject to declination by the tribe's tribal court.

(b) In a proceeding for the preadoptive or adoptive placement of an Indian child not within the jurisdiction of subdivision 1, the court, in the absence of good cause to the contrary, shall transfer the proceeding to the jurisdiction of the tribe. The transfer is subject to declination by the tribe's tribal court. For the purposes of this subdivision, "preadoptive placement" and "adoptive placement" have the meanings give in Minnesota Statutes, section 260.755, subdivision 3(a) and (c).

(c) In a proceeding for finalizing a permanency plan, the court shall, in absence of good cause to the contrary, transfer a matter to tribal court at any point in the proceeding for purpose of achieving customary adoption or other culturally appropriate permanency option, absent objection by either parent, upon the petition of either parent whose parental rights have not been terminated, or the Indian custodian or the Indian child's tribe. The transfer is subject to declination by the tribe's tribal court.

Subd. 5. Good cause to deny transfer. Establishing good cause to deny transfer is a fact- specific inquiry to be determined on a case by case basis. Socio-economic conditions and the perceived adequacy of tribal or Bureau of Indian Affairs social services or judicial systems may not be considered in a determination that good cause exists. The party opposed to transfer of jurisdiction has the burden to prove by clear and convincing evidence that good cause to deny transfer exists. Opposition to a motion to transfer jurisdiction to tribal court must be in writing and served upon all parties.

When determining whether good cause to deny transfer to tribal court exists, the court may find good cause to deny transfer if any one of the following circumstances exists:

- (1) The Indian child's tribe does not have a tribal court or any other administrative body of a tribe vested with authority over child custody proceedings, as defined by the Indian Child Welfare Act to which the case can be transferred and no other tribal court has been designated by the Indian child's tribe; or
- (2) The evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses and the tribal court is unable to mitigate the hardship by any means permitted in the tribal court's rules. Without evidence of undue hardship, distance alone shall not defeat transfer.

Minnesota Statutes 2013, section 260.771, is amended by adding a subdivision to read:

Subd. 6. Good cause to place an Indian child outside of the placement preferences. For the purposes of foster care, pre-adoptive, adoptive placement or other permanency placements, a determination of good cause to not follow the order of placement preference set out in the Indian Child Welfare Act, United States Code, title 25, section 1915, shall be limited to a finding by the court of one or more of the following considerations:

- (1) The request of the biological parent(s) or child, when the child is of sufficient age where appropriate. If the sole basis for deviating from the placement preference is based on request of the parent or child for the purpose to avoid application of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act, the court shall find good cause does not exist.
- (2) The testimony by a qualified expert witness designated by the child's tribe, and if necessary, testimony from an expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and contemporary and traditional child-rearing practices within that Indian child's tribe that supports deviating from placement preference due to the child's extraordinary physical or emotional needs requiring highly specialized treatment services.
- (3) The testimony by the local social service agency that after a diligent search has been conducted there are no available suitable families for the child that meets the placement preference criteria. Active efforts shall be made by conducting the diligent search including providing support to extended family members who are considered the primary placement option to assist them in becoming licensed foster parents.

The testimony that bonding or attachment to a foster family alone without the existence of any of the conditions named in 1-3 above, shall not be considered good cause to keep an Indian child in a lower preference or non-preference home.

The party urging that the placement preferences not be followed bears the burden of establishing the existence of good cause to modify placement preferences by clear and convincing evidence.

Minnesota Statutes 2013, section 260.012, is amended to read:

260.012 DUTY TO ENSURE PLACEMENT PREVENTION AND FAMILY REUNIFICATION; REASONABLE EFFORTS

(e) The court, before determining whether a child should be placed in or continue in foster care under the protective care of the responsible agency, shall also make a determination, consistent with section 260.012 as to whether reasonable efforts were made to prevent placement or whether reasonable efforts to prevent placement are not required. In the case of an Indian child, the court shall determine whether active efforts, according to the Indian Child Welfare Act of 1978, United States Code, title 25, section 1912(d) and Minnesota Statutes, Chapter 260, Section 260.762, were made to prevent placement. The court shall enter a finding that the responsible social services agency has made reasonable efforts to prevent placement when the agency establishes either:

Minnesota Statutes 2013, section 260C.007, is amended by adding a subdivision to read:

Subd. 26b. Relative of an Indian child. “Relative of an Indian child” means a person who is a member of the Indian child’s family as defined in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1903 (2), (6) and (9). Extended family member shall be as defined by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen (18) and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother in-law or sister in-law, niece or nephew, first or second cousin, or stepparent.

Minnesota Statutes 2013, 260C.007, subdivision 27, is amended to read:

Subd. 27. Relative. “Relative” means a person related to the child by blood, marriage, or adoption, or an individual who is an important friend with whom the child has resided or had significant contact and extended family members. For an Indian child, relative includes members of the extended family as defined by law or custom of the Indian child’s tribe or, in the absence of law or custom, nieces, nephews or first or second cousins, as provided in the Indian Child Welfare Act of 1978, United States Code, title 25, section 1903.

Minnesota Statutes 2013, section 260C.168, is amended to read:

260C.178 COMPLIANCE WITH INDIAN CHILD WELFARE ACT AND MINNESOTA INDIAN FAMILY PRESERVATION ACT.

The provisions of this chapter must be construed consistently with the Indian Child Welfare Act of 1978, United States Code, title 25, sections 1901 to 1963, and the Minnesota Indian Family Preservation Act of 1985, sections 260.751 to 260.835.

Minnesota Statutes 2013, section 260C.212, subdivision 2, is amended to read:

Subd. 2. Placement decisions based on best interests of the child.

(a) The policy of the state of Minnesota is to ensure that the child's best interests are met by requiring an individualized determination of the needs of the child and of how the selected placement will serve the needs of the child being placed. The authorized child-placing agency shall place a child, released by court order or by voluntary release by the parent or parents, in a family foster home selected by considering placement with relatives and important friends in the following order:

(1) with an individual who is related to the child by blood, marriage, or adoption; or

(2) with an individual who is an important friend with whom the child has resided or had significant contact, or

(3) for an Indian child, the agency shall follow placement preferences according to Indian Child Welfare Act of 1978, United States Code, title 25, section 1915.

(b) Among the factors the agency shall consider in determining the needs of the child are the following:

(1) the child's current functioning and behaviors;

(2) the medical needs of the child;

(3) the educational needs of the child;

(4) the developmental needs of the child;

(5) the child's history and past experience;

(6) the child's religious and cultural needs;

(7) the child's connection with a community, school, and faith community;

(8) the child's interests and talents;

(9) the child's relationship to current caretakers, parents, siblings, and relatives;
~~and~~

(10) the reasonable preference of the child, if the court, or the child-placing agency in the case of a voluntary placement, deems the child to be of sufficient age to express preferences; and

(11) the best interests for Indian child as defined in Minnesota Indian Family Preservation Act, Chapter 260, section 755, subd. 4.

(c) Placement of a child cannot be delayed or denied based on race, color, or national origin of the foster parent or the child.

(d) Siblings should be placed together for foster care and adoption at the earliest possible time unless it is documented that a joint placement would be contrary to the safety or well-being of any of the siblings or unless it is not possible after reasonable efforts by the responsible social services agency. In cases where siblings cannot be placed together, the agency is required to provide frequent visitation or other ongoing interaction between siblings unless the agency documents that the interaction would be contrary to the safety or well-being of any of the siblings.

(e) Except for emergency placement as provided for in section 245A.035, a completed background study is required under section 245C.08 before the approval of a foster placement in a related or unrelated home.

Minnesota Statute 2013 Section 260C.511 is amended to read:

(a) The "best interests of the child" means all relevant factors to be considered and evaluated. In the case of an Indian child, best interests are defined in Minnesota Indian Family Preservation Act, Chapter 260, section 755, subd. 4.

Minnesota Statutes 2013, section 626.556., subdivision 10 is amended to read:

Subd. 10. Duties of local welfare agency and local law enforcement agency upon receipt of report. (a) Upon receipt of a report, the local welfare agency shall determine whether to conduct a family assessment or an investigation as appropriate to prevent or provide a remedy for child maltreatment. The local welfare agency:

(4) Shall provide immediate notice to a child's tribe when agency has reason to believe the family assessment or investigation may involve an Indian child according to Minnesota Statutes, Chapter 260, section 761, subdivision 2. For purposes of this subdivision, immediate means within 24 hours.