

Juvenile Justice Services Intergovernmental  
Agreement Between the New Mexico Children,  
Youth and Families Department and the  
Mescalero Apache Tribe.

**THIS INTERGOVERNMENTAL AGREEMENT IS BETWEEN THE STATE OF NEW MEXICO ACTING THROUGH ITS CHILDREN, YOUTH AND FAMILIES DEPARTMENT AND THE MESCALERO APACHE TRIBE, A FEDERALLY RECOGNIZED INDIAN TRIBE.**

## **I. PURPOSE AND POLICY**

**THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT and THE MESCALERO APACHE TRIBE agree that:**

**The primary purpose of this Agreement is to protect and further the best interest of any child coming within the jurisdiction of the Mescalero Children's Court as having committed a delinquent act within the jurisdiction of the Mescalero Apache Tribe in violation of the Mescalero Tribal Code.**

**The supervision and rehabilitation of children within the jurisdiction of the Mescalero Apache Reservation are the primary concerns when providing services under this agreement; and**

**Training and technical assistance between the State of New Mexico and the Mescalero Apache Tribe is important for implementation of this agreement.**

- A. The Children, Youth and Families Department and The Mescalero Apache Tribe recognize that:**
- 1. There is no resource that is more vital to the continued existence and integrity of The Mescalero Apache Tribe than its children;**
  - 2. The Children, Youth and Families Department has a direct interest in protecting Native American culture and encouraging the cultural diversity of the citizens of the State of New Mexico;**
  - 3. That the members of the Mescalero Apache Tribe residing on the Mescalero Apache Indian Reservation are citizens of the State of New Mexico.**
  - 4. This Agreement is entered into under Mescalero Apache Revised Tribal Constitution (Article 11, Section 1, subsection J), and the New Mexico Children's Code (NMSA 32A-1 et seq.), and in accordance with the State government-to-government statutory authority and supporting policy.**

5. This Agreement is predicated on a government- to - government relationship between the State Of New Mexico and the Mescalero Apache Tribe 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 Mescalero Children's Court is of critical interest to The Mescalero Apache Tribe:
- C. 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 Mescalero Apache Reservation.

## II. Definitions

- A. **"Care, control and supervision"** means that the Children, Youth and Families Department or any of its programs has the authority to determine the place and duration of incarceration, modalities of treatment, access to ancillary services during the Children, Youth and Families Department placement, visiting hours, time and conditions for temporary releases, security, facilitation of releases except as provided for under Section V (E) 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"** means a person between the ages of 13 and 18 years of age who is subject to the jurisdiction of the Mescalero Children's Court. No judgment order or decree of the Mescalero Children's Court shall operate after the child turns 18 years of age.
- C. **"Child placed in a state facility,"** means a child over whom care control and supervision has been granted to the Children, Youth and Families Department by an order of the Mescalero Children's Court.
- D. **"Coming within jurisdiction,"** means that the Mescalero Apache Tribe has the legal authority to exercise jurisdiction over the individual and the matter in question.
- E. **"Delinquent Act"** means an act committed by a child that would be designated as a crime under the law if committed by an adult.
- F. **"FACTS"** means the Children, Youth and Families' Department Family Automated Client Tracking System.
- F. **"Good faith effort"** means a timely and diligent effort to promote collaboration, communication and cooperation between the Children, Youth and Families

Department and the Mescalero Apache Tribe and to promote the purposes of this Intergovernmental Agreement.

- G. **"HIPPA"** refers to the Health Insurance Portability and Accountability Act Pub. L. 104-191, 110 Stat. 1936 and rules promulgated under this Act.
- H. **"Temporary Release"** means leave from the facility pursuant to a Mescalero Children's Court order that designates times for departure and return.

### **III. General Provisions**

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

- A. This Agreement applies to any child placed in a state facility seeking resources of the State of New Mexico by an action of the Mescalero Children's Court through a Mescalero Children's Court order. NMSA 1978, §32A-1-8(E).
- B. The Children, Youth and Families Department will follow the statutory confidentiality restrictions of the New Mexico Children's Code and Health Insurance Portability and Accountability Act requirements in the performance of its responsibilities under this Agreement.

The Mescalero Apache Tribe will follow the confidentiality restrictions of Chapter 11 of the Mescalero Apache Code and Federal Privacy Act, 5 U.S.C. Section 552(a), Health Insurance Portability and Accountability Act requirements and pertinent the Children, Youth and Families Department and the Mescalero Children's Court policies in performance of its responsibilities under this Agreement.

- C. The Children, Youth and Families Department and the Mescalero Children's Court recognize that when a child on the Mescalero Apache Reservation is placed in a state facility seeking resources of the State of New Mexico by action of the Mescalero Children's Court, the free flow of information between the Children, Youth and Families Department and the Mescalero Apache Tribe in relation to the child within the jurisdiction of the Mescalero Apache Reservation is proper and necessary to the administration

of juvenile justice, and is in the best interests of the child on the Mescalero Apache Reservation. The Children, Youth and Families Department shall make information, reports and records relating to a child within the jurisdiction of the Mescalero Apache Reservation available to the Mescalero Children's Court to the extent authorized by the New Mexico Children's Code, Children, Youth and Families Department policy and other state and federal confidentiality statutes and administrative rules. Mescalero Children's Court shall make information, reports and records relating to the child on the Mescalero Apache Reservation available to the Children, Youth and Families Department to the extent authorized by Mescalero Apache Tribal law, Mescalero Apache Tribal policy and other federal confidentiality statutes and administrative rules.

- D. The Children, Youth and Families Department and the Mescalero Children's Court acknowledge that the disclosure of alcohol or drug abuse treatment records is governed exclusively by federal law.
- E. Juvenile Justice Services' staff of The Children, Youth and Families Department will testify, when necessary, in Mescalero Children's Court upon issuance of a letter from the Mescalero Children's Court. Appropriate staff of the Mescalero Children's Court will testify, when necessary, in State court upon issuance of a letter requesting appearance by The Children, Youth and Families Department.
- F. It is mutually agreed that there shall be established a Coordination Committee of representatives of The Children, Youth and Families Department and The Mescalero Apache Tribe which shall meet quarterly or more frequently as needed to address such issues as:
  - 1. Coordination and communication between parties;
  - 2. Interpretation of this Agreement;
  - 3. Reviews of policies and procedures;
  - 4. Caseload trends and their implications;
  - 5. Matters of mutual concern;
  - 6. Mescalero Apache customs and laws;
  - 7. Federal, State or Tribal laws and regulations;
  - 8. Other issues that may arise as deemed appropriate.
- G. The Mescalero Children's Court shall be placed on the Children, Youth and Families Department mailing list of proposed rule changes and provided notice of proposed rule changes as provided in the Children, Youth and Families Department's administrative rules. For the purpose of this section, the Mescalero Children's

Court General Counsel will be the designated contact. The Mescalero Children's Court and the Children, Youth and Families Department will update contact information and mailing lists on a periodic basis.

- H. The Children, Youth and Families Department shall designate a liaison person in the Children, Youth and Families Department administration who will be the primary point of contact with the Mescalero Apache Tribe regarding the Children, Youth and Families Department's rules and policies and issues related to implementation of this Agreement. The Children, Youth and Families Department's liaison may be contacted at:

Native American Liaison  
Children, Youth and Families Department  
P.O. Drawer 5160  
Santa Fe, NM 87502  
Telephone Number: (505) 827-7612  
FAX Number: (505) 827-4474

- I. The Mescalero Children's Court shall designate a liaison person within its administration who will be the primary point of contact with the administration regarding The Mescalero Apache Tribe's rules, policies, financial needs and issues related to implementation of this agreement. The Mescalero Apache Tribe liaison may be contacted at:

Office of the Prosecutor  
Mescalero Apache Tribe  
PO Box 227  
Mescalero, NM 88340  
  
Telephone: 575-464-9205  
FAX: 575-464-4454

- J. This Agreement shall take precedent when the Agreement provides greater protection for the rights of the child and role of the Mescalero Children's Court than requirements of the Children, Youth and Families Department administrative rules, provided there is no violation of applicable laws and administrative rules.

#### **IV. Supervision & Rehabilitation Services**

- A. No child under the jurisdiction of the Mescalero Children's Court may be incarcerated or placed in a state facility seeking resources of the Children, Youth and Families Department without a valid court order from the Mescalero Children's Court signed by the presiding judge. All sentences ordered by the Mescalero Children's Court must be served concurrently.
- B. Any Mescalero Children's Court order requiring the incarceration 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 proceedings and the facts giving rise to a finding of the delinquent act by the child;
  - 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 The Children, Youth and Families Department for an indeterminate term, not to exceed one year;and,
  - 5. A grant of care, control and supervision of the child to the Children, Youth and Families Department pursuant to Chapter 32A NMSA.
- C. Upon the finding of delinquency, a child may be placed in a Children, Youth and Families Department designated facility for the purpose of diagnostic commitment; however such placement shall be no longer than fifteen (15) days unless the tribal court approves an extension as requested in writing by the Children, Youth and Families Department. Such placement shall only be ordered upon a hearing. The fifteen (15) days shall begin at the time of the child's arrival at the Children, Youth and Families Department facility.
- D. Treatment costs associated with the rehabilitation of a child within the jurisdiction of the Mescalero Apache Reservation will be provided through any system that the State of New Mexico uses to provide treatment to any other child incarcerated in state facilities.
- E. Access to non-secure environment diagnostic services is dependent upon available resources and the nature of services requested by the Mescalero Children's Court.
- F. Responsibility for transportation of the child for admission, discharge, temporary release due to a court hearing or special circumstances or events will be the responsibility of Mescalero

Apache Tribe. A Mescalero Children's Court order must accompany the child. The Children, Youth and Families Department will be responsible for any transportation during the child's commitment in accordance with its policies and procedures.

- G. Cases from the Mescalero Children's Court will be entered and kept in the Children, Youth and Families Department FACTS information system and in hard copy as a Master File. This information is provided to the Mescalero Children's Court in hard copy as needed.
- H. Records will be sealed and archived like any other case handled by the Children Youth and Families Department. Any review of a record must have prior approval of the Mescalero Children's Court.

#### **V. Periodic Judicial Review**

- A. The Mescalero Children's Court retains original jurisdiction over the matter giving rise to the Children, Youth and Families Department placement.
- B. The Mescalero Children's Court will conduct a review hearing for each child that has been placed under the care, control and supervision of the Children, Youth and Families Department at least every 6 months or as requested by the Children, Youth and Families Department.
- C. A parent, guardian or custodian may request a reconsideration hearing on the placement of the child by the Mescalero Children's Court in a Children, Youth and Families Department facility under Section 11-2-2 of the Mescalero Children's Code.
- D. At the conclusion of the review or reconsideration hearing, the Mescalero Children's Court may make a finding as to whether it is in the best interests of the child to remain incarcerated under the original order.
- E. In cases in which the Mescalero Children's Court conducts a review or reconsideration hearing and finds it is not in the best interest of the child to remain in the placement in the Children, Youth and Families Department facility the Mescalero Children's



Court may order the release of the Child from the Children, Youth and Families Department placement.

- F. The removal of a child from a Children, Youth and Families Department facility by action of the Mescalero Children's Court does not affect the operation of this agreement.

## **VI. Training and Technical Assistance**

- A. The Children, Youth and Families Department shall include training on this Agreement and policies and procedures developed to implement this Agreement as part of the Children, Youth and Families Department's Juvenile Justice Services staff training plan. The Children, Youth and Families Department agree to invite and provide notice of the Children, Youth and Families Department sponsored training to the Mescalero Children's Court. The Mescalero Children's Court agrees to invite and provide notice of the Mescalero Children's Court sponsored training to the Children, Youth and Families Department office.
- B. The Children, Youth and Families Department shall provide access to available non-facility based training and technical assistance in accordance with its established criteria to the Mescalero Children's Court on an as requested basis, with such requests being made through the Children, Youth and Families Department Tribal Liaison.

## **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.

## **VIII. Effective Date**

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

**IX. Effect of Prior Agreements**

This Agreement supersedes all prior written and oral agreements, covenants and understanding between the Children, Youth and Families Department and/or its Children, Youth and Families Department offices and The Mescalero Apache Tribe 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**


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

**XI. Sovereign Immunity**

Nothing herein shall be construed as a waiver of the Mescalero Apache Tribe's or the State of New Mexico's sovereign immunity.

IN WITNESS WHEREOF, THE PARTIES HEREBY AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT BETWEEN THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT OF THE STATE OF NEW MEXICO AND THE MESCALERO APACHE TRIBE.

**Approved by the Mescalero Apache Tribe**

  
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Mark Chino  
Mescalero Apache Tribal President

1/7/08  
Date

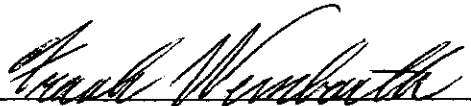
**Approved by The Children, Youth and Families Department**

  
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Dorian Dodson

1/7/08  
Date

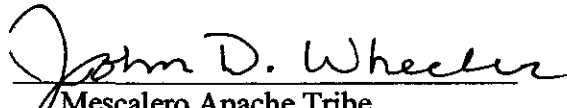
The Children, Youth and Families  
Department Cabinet Secretary

**Reviewed for Legal Sufficiency**



Frank D. Weissbarth  
The Children, Youth and Families  
Department Office of General Counsel

11/19/07  
Date



Mescalero Apache Tribe  
Office of General Counsel

1/5/2008  
Date

**MESCALERO APACHE TRIBE  
MESCALERO, NEW MEXICO**

**RESOLUTION 07-122**

**WHEREAS**, the Mescalero Apache Tribe, an Indian tribe organized under the Indian Reorganization Act of June 18, 1934 (25 U.S.C. § 476), and under its Revised Constitution, has full power to act for the Tribe; and

**WHEREAS**, pursuant to Article XI, Section 1(i) of the Revised Constitution, the Mescalero Apache Tribal Council has the power to represent the Tribe and act in all matters that concern the welfare of the Tribe and to make decisions not inconsistent with, or contrary to, the Revised Constitution; and

**WHEREAS**, pursuant to Article XI, Section 1(j) of the Revised Constitution, the Mescalero Apache Tribal Council has the full power and authority to negotiate with the State government; and

**WHEREAS**, by prior Resolution 06-06, the Mescalero Apache Tribal Council authorized the President of the Mescalero Apache Tribe to negotiate an agreement with the New Mexico Children, Youth and Families Department (NMCYFD) to cooperate in assessing state resources and services that would be available to youth residing within the exterior boundaries of the Mescalero Apache Reservation who become involved with the Mescalero Children's Court; and

**WHEREAS**, the Mescalero Apache Tribe is the first tribe in the State of New Mexico to undertake such an effort to access and secure such services for its youth; and

**WHEREAS**, extensive consultation between NMCYFD and all Tribal agencies involved with Mescalero youth (members of the Tribal Council, social services, school counselors, the Tribal Prosecutor, Tribal Court, law enforcement, Tribal Human Services staff, Tribal attorneys, together with technical assistance from the American Indian Development Associates) has occurred over the past eighteen (18) months; and

**WHEREAS**, the Intergovernmental Agreement attached hereto as Exhibit "A" is the result of this consultation and the strong advocacy of all those involved on behalf of Mescalero youth.

**NOW, THEREFORE, BE IT RESOLVED** that the Mescalero Apache Tribal Council believes Mescalero youth have a right to access services provided by the State of New Mexico which may benefit them and does hereby direct the President of the Mescalero Apache Tribe to execute and deliver all necessary documents in order to ensure that Mescalero youth have such access as is due them.

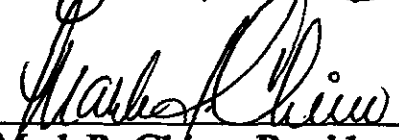
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**RESOLUTION 07-122**

**CERTIFICATION**

**The foregoing enactment of the Mescalero Apache Tribal Council is duly adopted and approved on the 27th day of December 2007, at legally called session of the Mescalero Apache Tribal Council, by a vote of 8 for and 0 against; with 0 abstaining at which quorum was present and at which a majority of the members voted in favor thereof. This enactment is approved by the President of the Mescalero Apache Tribe under authority of Article XII, Section 1, of the Revised Constitution.**

  
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**Alfred LaPaz, Secretary**

  
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**Mark R. Chino, President**