



Indian Child Welfare Policy

STATE of Maine
OFFICE OF CHILD AND FAMILY SERVICES POLICY

Section
7

Subsection
4

Approved by: [Signature]
Director, OCFS

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## I. SUBJECT

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Indian Child Welfare.

## II. STATUTORY AUTHORITY

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25 U.S.C. [§1901 - 1923](#).  
Title 22, [Chapter 1066](#)  
22 M.R.S [§7805](#)

## III. DEFINITIONS

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For a complete list of definitions, see the [OCFS Policy Manual Glossary](#). In this document, the first reference to any word that is defined is hyperlinked to the Glossary.

## IV. POLICY

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The Indian Child Welfare Policy outlines the practices and procedures that will be followed throughout the life of the case for children who are members of a federally recognized tribe, or who are eligible for membership in a federally recognized tribe. The policy further outlines how to partner with federally recognized tribes located in Maine; how the Indian Child Welfare Act (ICWA) is applied for children who enter state custody; and how to assure that the culture is respected for children with connections to an [Indian tribe](#).

There is a history of genocide toward Indian people in this country, that has continued through child welfare practices of removing [Indian children](#) from their culture and families, denying children connection to their culture, family, and language. In the 1970's, prior to the passage of the Indian Child Welfare Act (ICWA) in 1978, Wabanaki (the confederacy of tribes in Maine and Eastern Canada) children in Maine were removed at a much higher rate per capita than that of non-Indian children. ICWA codified higher standards for the protection of the rights of Indian children, their family, and their tribal community. It is important to support and recognize the unique culture of Indian people.

The Department of Health and Human Services (DHHS), Office of Child & Family Services (OCFS) believes that Indian children should remain with their family, [relatives](#), and Tribe or Band when they cannot remain with their [parent\(s\)](#). Federal ICWA law states that tribes will be notified of child welfare involvement at the time the petition is filed. However, OCFS believes, commits to, and expects involvement to begin at the time that Intake receives a report and/or first contact with a family due to the high value placed on partnering with tribes and engaging in joint decision making. The most important philosophy to remember throughout a case involving ICWA law is inclusion. It is imperative to include the appropriate Tribe or Band throughout the life of the case.

This policy outlines the additional steps required when working with an ICWA case.

There are four (4) federally recognized tribes in Maine with five (5) locations. They are:

- The Passamaquoddy Tribe at Motahkomikuk (Mah-dock-mee-gook) (Indian Township)
- The Passamaquoddy Tribe at Sipayik (Zee-bye-ig) (Pleasant Point)
- The Penobscot Nation
- The Houlton Band of Maliseets
- Mi'kmaq (Mic-mack or Mig-ma) Nation (formerly known as The Aroostook Band of Micmacs)

For tribal contact information regarding federally recognized tribes outside the state of Maine, contact the OCFS ICWA Liaison.

The Department has two tribal agreements, the 1987 Penobscot agreement and the 2002 Houlton Band of Maliseet Indians agreement, (Appendices H and G).

**Note:** In this policy the term Indian will be used instead of Native to conform to the wording of ICWA language. It is important to ask individuals and families what term they prefer to use when working with them, as their preference may also include their tribal affiliation.

## V. PROCEDURES

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**Intake.** The Intake Unit is the unit within OCFS that receives the initial report regarding allegations of child abuse and/or neglect. When the Intake Caseworker receives a report, they will determine as soon as possible if ICWA applies. They will ask the referent if it is known if the child who is the subject of the report has connections to an Indian tribe.

- a. If it is determined that the child has a connection to an Indian tribe, the Intake Caseworker will ask:
  - i. if tribal affiliation is known; and
  - ii. if the family lives on a [reservation](#) or within other tribal lands.

**Note:** The referent may not know if there is a tribal connection. Ultimately, the Indian tribe determines whether the child is either a member or eligible for membership. This information will be documented in the child welfare information system. Each federally recognized tribe establishes its own membership eligibility criteria. The child may be eligible for membership in more than one tribe. In that case, all applicable tribes will be notified and the Indian tribes will be given the opportunity to agree on which tribe is the [Indian child's tribe](#) for the purpose of the child welfare action. If the Indian tribes are not able to come to an agreement, the court shall designate the Indian child's tribe based on which tribe has the most significant contact with the child.

- b. When a report indicates tribal affiliation with one of the federally recognized tribes located in Maine, the Intake Caseworker will follow the procedures below:
  - i. When the report is about a member of the Houlton Band of Maliseets or the Mi'kmaq Nation, or a member of the Penobscot Nation or Passamaquoddy Tribe who is not residing on tribal land, the Intake Caseworker will refer the report to the appropriate tribe's child welfare agency in addition to the appropriate OCFS District Office. The

- report to tribal child welfare will be documented within the Additional Referrals related list on the details tab in the child welfare information system.
- ii. When the report is about a member of the Passamaquoddy Tribe or the Penobscot Nation and the family resides on tribal land, the Intake Caseworker will refer the report to the tribe's child welfare agency and not to the OCFS District Office. It is then the responsibility of the tribe, not OCFS, to make the decision regarding the allegations and if the report is appropriate for assignment or would be screened out.
  - iii. When the Intake Unit screens out a report that does not meet the criteria for assignment, yet the report suggests tribal affiliation with one of the tribes located in Maine, the Intake Caseworker will forward the report to the appropriate tribe's child welfare agency. In addition, the Intake Caseworker will document this in the child welfare information system in the Additional Referrals related list on the details tab of the intake report.

### Child Protective Investigation.

- a. Assignment Activities. When the child may be associated with one of the four (4) federally recognized tribes in Maine, the investigation caseworker will partner with the tribe's child welfare representative (Appendix A) and investigate any tribal lineage. In all cases where the child may be an Indian child, regardless of whether the federally recognized tribe is located in Maine, the caseworker will investigate and gather information as to any tribal lineage.
  - i. Prior to initiating the investigation, both the supervisor and caseworker engage in outlining assignment activities. During this process, ICWA status will be identified if known or a plan to explore tribal affiliation developed.
  - ii. Moving forward, the OCFS caseworker and tribal caseworker [co-case manage](#) the investigation. Whenever possible, initial investigation activities with the family will be coordinated with the tribal caseworker, who is an equal decision maker. Assignment activities will be coordinated between the OCFS caseworker and tribal caseworker. The tribal caseworker may have knowledge of the family that OCFS does not have, and this will be considered before initial contact is made. If the tribal caseworker is not able to attend the initial visit, the caseworker will provide the family with the tribal caseworker's name and contact information so the family may contact the tribal caseworker. It is recognized that OCFS has specific timeframes that will be adhered to, and the tribal caseworker may not be available to accompany the OCFS caseworker within these timeframes.
- b. Investigation Activities. The OCFS caseworker will:
  - i. Review agency history for each parent/caregiver. Ask the tribal caseworker to review their agency's history for the parent/caregiver.
  - ii. Request a criminal background check for each parent/caregiver and contact local law enforcement to obtain additional information concerning law enforcement involvement. In addition, ask the tribal caseworker to obtain any criminal background check information from the [tribal court](#) and tribal law enforcement.
  - iii. The investigation caseworker will directly inquire about Indian connections, asking questions of the family members, and pursuing additional information about any tribal affiliation. If there is reason to believe that the child is an Indian child, then the investigation caseworker will seek information on whether the child is an Indian child from each named tribe. As soon as the child is identified as having any tribal

connections, the applicable tribal child welfare agency will be notified and asked to participate in the investigation process. **Note:** If the child may qualify under ICWA, all ICWA requirements will be followed until ICWA is ruled out.

- iv. Conduct remaining investigation activities in partnership with the tribal caseworker. When the tribal caseworker is unable to participate in follow up activities, including additional interviews and collateral contacts, the OCFS caseworker will consult with the tribal caseworker prior to the contact to ensure their questions and concerns are also addressed (see [2.2 Child Protection Investigation Policy](#)).
- v. Include the tribal caseworker in the Preliminary Safety Decision regardless of whether they were able to participate in the initial contacts with critical case members. If the tribal caseworker is not available, then the tribal child welfare supervisor will be consulted before a decision is made. If the tribal child welfare representatives are unavailable, OCFS will proceed with decision making, document attempts to consult with the tribal caseworker in the child welfare information system, and inform tribal child welfare of decisions, facts supporting the decision, and the results of the Structured Decision Making (SDM) Safety Assessment Tool© immediately or within an agreed upon timeframe.
- vi. Engage the family, their supports, and the tribal caseworker in the development of the [Safety Plan](#) when it has been determined that one or more safety threats are present and safety interventions have been planned or taken to assure the safety of the child who will remain in the care and/or custody of their parent(s) (see [2.2 Child Protection Investigation Policy](#)). The tribal caseworker will be a joint facilitator and decision maker in the development of the Safety Plan. Services that the tribal child welfare agency may be able to provide will be considered in the development of the Safety Plan. If the OCFS caseworker and tribal caseworker do not agree, their supervisors will be contacted to work out the Safety Plan for the family.

**Note:** In ICWA investigations, the tribal caseworker may implement an [Indian Custodian Agreement](#) which allows the tribe to transfer custody to a third party (rather than the OCFS Short-term Alternative Care Plan which is part of the Safety Plan).

- c. Continued Activities. OCFS policies governing child protection investigation and prevention service cases will be followed in ICWA cases with the added requirement that the tribal child welfare representatives be included as co-case managers. When OCFS and tribal co-case managers are not in agreement regarding case planning and decision making, the OCFS caseworker will consult with the AAG to determine OCFS' legal obligations and course of action.
- d. When the investigation is ready for closure, the OCFS caseworker will consult with the tribal caseworker and send them a copy of the closing letter or findings letter.

**Juvenile Proceedings.** Maine law authorizes the commitment of a juvenile to the custody of DHHS as an alternative disposition for a juvenile adjudicated of a juvenile offense when certain legal criteria are met. When it is recommended that a juvenile enter DHHS custody through a juvenile justice proceeding, and the juvenile has a connection to an Indian tribe, the caseworker will consult with the AAG to determine how to proceed.

**Filing a Petition.** When considering whether to file a petition with regard to an Indian child, state statutes and federal ICWA statutes will both be satisfied. **Note:** The petition and affidavit used in ICWA cases is a different version (Appendix D) than in other cases. The caseworker and supervisor will consult with the AAG if they have questions regarding the petition or any other questions, such

as court scheduling issues when tribal representatives are located in different time zones throughout the country.

- a. For cases initiated by a Preliminary Protection Order (PPO), the federal standard for emergency removal of the Indian child will be followed, including:
  - i. An emergency removal requires [imminent physical damage or harm](#) to the child to be present.
  - ii. For children who do not live on Indian lands (fee land, trust land, reservation), the petition will initially be filed in state court and the caseworker will contact the appropriate tribe as soon as a tribal affiliation is identified. (For tribes located in Maine, see Appendix A).

**Note:** Only two (2) of the four (4) federally recognized tribes in Maine, the Passamaquoddy Tribe and the Penobscot Nation, exercise exclusive jurisdiction over child welfare cases. Therefore, if the child is on Penobscot Nation's or Passamaquoddy Tribe's land at the time of the investigation, then the caseworker will contact the child protective services of that particular tribe as soon as a tribal affiliation is identified.
- b. For cases initiated by a Petition for Child Protection Order ("Jeopardy Petition" or "Straight Petition"), the caseworker will follow the federal statute for removal of the Indian child and there will be clear and convincing evidence that the child is likely to suffer serious harm if permitted to remain in the custody of the parent(s) or [Indian custodian\(s\)](#).
- c. The OCFS caseworker will plan the pre-removal [Family Team Meeting](#) with the tribal caseworker. Both caseworkers will identify and invite the participants and family supports.

**Note:** The OCFS caseworker will make sure that official written notice of the filing of the petition is sent out to the tribe even when successful partnership with the tribe's child welfare agency is occurring during the investigation.

- d. OCFS will demonstrate to the court that prior to the commencement of the proceeding, [active efforts](#) (Appendix F) have been made to alleviate the need to remove the Indian child from their parent(s) or Indian custodian(s). These efforts shall take into account the prevailing social and cultural conditions and way of life of the Indian child's tribe. They shall also involve and use the available resources of the [extended family members](#), tribe, Indian social services agencies, and individual Indian caregivers.
- e. Notification. The caseworker will notify through in-hand service to the parties as required by Maine Civil Rules. The caseworker will also send notification to any tribe, parent(s), and Indian custodian(s) via certified mail with return receipt requested and via e-mail, at the mailing address and e-mail address on file with the United States Department of the Interior, Bureau of Indian Affairs. Notification of a petition being served will occur through the tribes' child welfare agency and will be sent to the Tribal Child Welfare Director. Proof of service is required for all parties, as well as the tribal ICWA representative.
  - i. All notifications will include information required under ICWA guidelines. The Notification Form is located in Appendix E. The caseworker will attempt to contact all identified relatives when completing the form and the form needs to be signed by the caseworker. With regard to the Houlton Band of Maliseet Indians, notification will be sent through registered mail, return receipt requested, and both the tribal caseworker and tribal Chief will be served in hand. A copy of every notification sent to

each tribe, parent, and Indian custodian including a copy of the petition, will be sent to the Eastern Regional Director of the Bureau of Indian Affairs (BIA) with the cover letter (Appendix C). For contact information for tribes located in Maine, see Appendix A.

- ii. If the location or identity of the Indian parent(s), Indian custodian(s), or child's tribe cannot be determined, then the Notification and Petition along with the cover letter (Appendix C and E), including all of the information required under ICWA guidelines, will be sent to the Eastern Regional Director of the BIA.

**Note:** Notification is of high importance so that the tribe may assert any rights in the legal proceedings.

- iii. **Timeframe:** No child protection hearing in ICWA cases, excluding the PPO hearing, may be heard until at least ten (10) days after receipt of notice by the parent(s), Indian custodian(s), and tribe. The parent(s), Indian custodian(s), or tribe may request, and will be granted, an additional twenty (20) days to prepare for hearing, thirty (30) total days from receipt of notice.
- f. When an Indian child's Indian parent, Indian custodian, or tribe petitions the court to transfer the jurisdiction to tribal court, the District Court shall promptly notify the tribal court of the transfer petition and transfer the proceeding to the jurisdiction of the Indian child's tribe unless there are exceptions as defined in statute [Title 22, chapter 1066](#).
  - g. A [Qualified Expert Witness](#) (QEW) is always required in ICWA cases. The QEW submits a report to the court and may be asked to testify in court regarding removal and active remedial efforts. The QEW provides information regarding social and cultural standards and child-rearing practices of the child's tribe. The QEW also provides information regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. It is the OCFS caseworker's responsibility to secure the QEW. The caseworker will consult with the AAG to secure a QEW for a case and contact the OCFS ICWA Liaison for names of active QEWs. **Note:** The QEW will submit the bill to OCFS for payment.

**Active Efforts.** It is required that the caseworker will conduct active efforts in ICWA investigations/cases at all stages of casework (Appendix F).

- a. The caseworker's active efforts include, but are not limited to:
  - i. Assisting the parent(s) or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan. ([22 M.R.S. §3943\(1\)](#)).
  - ii. Convening Family Team Meetings to engage the Indian child, Indian child's parent(s), Indian child's extended family members, and representatives of the Indian child's tribe.
  - iii. Identifying appropriate services and helping the parent(s) to overcome barriers, including actively assisting the parent(s) in obtaining such services (e.g., by providing transportation).
  - iv. Requesting assistance from the designated representative of the Indian child's tribe to understand and consider the tribe's prevailing social, cultural, and familial standards.
  - v. Completing a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal.

- vi. Notifying and consulting with extended family members of the Indian child to provide support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child.
  - vii. Identifying community resources including housing, financial, transportation, mental health, substance use, peer support services, and actively assisting the parent(s) or extended family in accessing and utilizing those resources, including consideration of alternative ways to address the needs of the parent(s) and extended family if services are unavailable.
- b. Active efforts apply to the child, parent(s), Indian Custodian(s), and tribe. The caseworker will document active efforts in the child welfare information system including:
- i. The specific safety concerns that OCFS is addressing with active efforts;
  - ii. A list of the specific active efforts that OCFS and tribal child welfare determine would best address the safety concerns and the reason for selecting these specific active efforts;
  - iii. Dates, people contacted, and other details supporting how active efforts were provided, completed, or accomplished; and
  - iv. Results of the specific active efforts provided and if the results were not successful, how OCFS adjusted the active efforts to better address the safety concerns.

**Note:** Documentation cannot just state that active efforts were unsuccessful, it will also outline the specific active efforts and why/how they were unsuccessful.

**Family Team Meetings.** The [7.1 Family Team Meeting \(FTM\) Policy](#) outlines the decision points where an FTM will occur, and the elements of the FTM process, which include preparation, implementation, planning, and documentation. These expectations are the same for an ICWA case.

- a. The difference in an ICWA case is that the OCFS caseworker will co-case manage the steps of the FTM with the tribal caseworker from the planning phase, invitations, preparation, and determining who will facilitate the meeting. The caseworker will make sure that the family remains at the center of planning for the FTM and identifying team members who are invited to the FTM. Both OCFS and the tribe may identify team members who are considered to be essential to planning for the family and will be invited to the FTM.
- b. The OCFS caseworker and the tribal caseworker will decide together how best to invite and prepare the attendees for the FTM and communicate before the meeting occurs to ensure the prep work was completed. The caseworkers will also decide who will facilitate and scribe at the meeting. It is important that the caseworkers present a cohesive working relationship to best meet the family's needs and assist them in planning for the child's needs regarding safety, permanency, and well-being.
- c. Cultural differences can lead to creative solutions that may be better accepted by the family and lead to increased success. FTMs play a crucial role in ensuring active efforts to prevent the breakup of the Indian family (see "ICWA Definitions" under Active Efforts section of this policy).

**Note:** The tribal caseworker will also be invited to the pre-removal FTM.

**Placement.** The OCFS caseworker will make placement decisions with the tribal caseworker in both emergency and non-emergency situations. When this is not possible, the OCFS caseworker will notify the tribal child welfare agency of the placement by the next business day.



- a. Unless the Court has made a judicial finding that there is good cause to deviate from ICWA placement preferences or the child's tribe has established a different order of preference, the order of placement preference will be as follows:
  - i. A member of the Indian child's extended family (either Indian or non-Indian). It is important to remember that a "relative placement" may be defined by the tribe.
  - ii. A resource home licensed, approved, or specified by the Indian child's tribe.
  - iii. An [Indian resource home](#) licensed/approved by an authorized non-Indian licensing authority.
  - iv. An institution for children approved by an Indian tribe or operated by an [Indian organization](#) which has a program suitable to meet the Indian child's needs.

**Note:** A placement may not depart from the preferences under this section based on the socioeconomic status of any placement relative to another placement. A placement may not depart from the preferences based solely on ordinary bonding or attachment that developed from time spent in a nonpreferred placement. ([22 M.R.S. §3943\(2\)](#))

- b. The prevailing social and cultural standards as defined by the Indian tribe, not the OCFS Caseworker, in which the parent or extended member has ties shall be considered when making a placement of an Indian child.
- c. When no preferred placement is available as specified above, the caseworker will make active efforts to place the child with a family committed to ensuring the child has extended family visitation and opportunities to participate in the cultural, spiritual, religious, and ceremonial activities of the child's tribe. The OCFS caseworker will make this placement decision in conjunction with the tribal caseworker. It is important in these situations that the tribal caseworker has an opportunity to meet with the resource family prior to placement to explain these expectations. If it cannot occur prior to placement, it will occur as soon as possible after placement is made.
  - i. If the placement preferences cannot be met, OCFS will demonstrate through clear and convincing evidence that active efforts to meet the preferences have been made and documented.

**Note:** The tribal caseworker may also request that the family sign a [cultural agreement](#), developed by the tribe, to ensure the child remains connected to the tribe.

**Family Reunification.** Family reunification is the primary goal when the child has been removed from their family.

- a. The OCFS caseworker, in partnership with the tribal caseworker develops the [Preliminary Rehabilitation and Reunification Plan](#) and the [Rehabilitation and Reunification Plan](#) in partnership with the parent(s). It is important to consider and utilize the resources the tribe can bring to support the family. The tribe may have an already established relationship with extended family members who may also support the family during and after the reunification process. The services offered will be culturally responsive.
- b. The caseworker will also document cultural connections to the tribe in the Child Plan and build or enhance these connections through visitation and cultural traditions/activities.
- c. The Rehabilitation and Reunification Plan as outlined in policy and law applies to ICWA cases as well. The OCFS and tribal caseworkers develop this plan together and in

collaboration with the family. **Note:** If the OCFS and tribal caseworkers do not agree on the family's needs, then the supervisors will be consulted. If a resolution cannot be reached, the AAG will be consulted.

- d. The OCFS caseworker (or any party) seeking foster placement of or termination of parental rights to the Indian child shall satisfy the court that active efforts (Appendix F) have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. ([25 U.S.C. §1912\(d\).](#)) **Note:** Termination of Parental Rights is done only in rare circumstances and only when the tribal caseworker is in agreement.

**Visitation.** The expectation of visitation in ICWA cases is expanded to include extended family. The OCFS caseworker will coordinate visits with the family and the tribal caseworker. Visits will include consideration of tribal and cultural norms, allow extended family to attend the visit, and if supervision is needed, who will supervise, etc. (see [3.1 Permanency Policy](#)).

**Concurrent Planning.** In all cases [concurrent planning](#) is a vital component to move the child to permanency. Steps toward permanency will be discussed at all FTMs and decisions made jointly between the OCFS caseworker, tribal caseworker, and family. In ICWA cases, it is critical to include both the tribes and the family in discussions regarding permanency timeframes and options for families. In some tribal cultures adoption is not the preferred permanency option. When working with a tribe for whom adoption is not customary, if the child cannot be reunified with the parent, Permanency Guardianship will be considered and discussed with the tribal child welfare staff, regardless of the child's age.

**Permanency.** Permanency for children in ICWA cases is as urgent as it is in all cases; however, connection to an Indian tribe provides a sufficient, compelling reason under state law not to file a petition to terminate parental rights when the child has been in state custody for fifteen (15) out of the most recent twenty-two (22) months.

- a. The OCFS caseworker will develop a concurrent plan with the tribal caseworker and the family. It is expected that the OCFS caseworker will include the tribal caseworker throughout the life of the case, including to develop alternative permanency plans, as different tribes and bands have different cultural norms regarding permanency guardianship and adoption.
- b. Termination of Parental Rights (TPR) is not an acceptable outcome in all tribes or bands. The OCFS caseworker will explore the views of the child's tribe or band before an alternative goal of adoption is selected. Some tribes or bands have other alternative permanency options reflective of their tribal customs.
- c. When termination proceedings move forward the state will prove that 'Active Remedial Efforts' were made prior to filing the TPR Petition and that the efforts have continued until the TPR process concludes.

### **Permanency Guardianship.**

- a. Unless the court has made a finding of good cause to deviate from the ICWA placement preferences or the child's tribe has established a different order of preference, the OCFS caseworker will consider placement preferences for permanency guardianship in the following order:
  - i. A member of the Indian child's extended family (either Indian or non-Indian). It is important to remember that a "relative placement" may be defined by the tribe.

- ii. A resource home licensed, approved or specified by the Indian Child's tribe.
  - iii. An Indian resource home licensed/approved by an authorized non-Indian licensing authority.
- b. When no preferred placement is available as specified above, the OCFS caseworker will make active efforts to place the child with a family committed to ensuring the child will have extended family visitation and the opportunity to participate in cultural, spiritual, religious, and ceremonial activities of the child's tribe. The OCFS caseworker will make this placement decision in collaboration with the tribal caseworker.
- c. If the placement preferences cannot be met, OCFS will demonstrate through clear and convincing evidence that active efforts to meet the preferences included diligent search and were completed in partnership with the tribal caseworker. The steps taken will be documented in the child welfare information system including an explanation why those preferences could not be met.

## Adoption.

- a. In rare cases where adoption is agreed upon with tribal child welfare, unless the Court has made a finding of good cause to deviate from the ICWA adoption preferences or the child's tribe has established a different order of preference, the OCFS caseworker will consider adoption preferences in the following order:
  - i. An extended family member of the Indian child,
  - ii. Another member or citizen of the Indian child's tribe,
  - iii. A member or citizen of an Indian tribe in which the Indian child is eligible for membership or citizenship, but that is not the Indian child's tribe;
  - iv. Another Indian with whom the Indian child has a relationship; or
  - v. Another Indian from a tribe that is culturally similar to or linguistically connected to the Indian child's tribe.
- b. If the placement preferences cannot be met, OCFS will demonstrate through clear and convincing evidence that active efforts to meet the preferences have been made and documented.
- c. The OCFS caseworker will notify the AAG if the tribe or family requests the adoption legalization hearing to occur in tribal court rather than in state court.

## Youth Transition Services.

- a. The [3.9 Youth Transition Services Policy](#) is the same for Indian children as it is for all children.
- b. Indian children, as foster children in custody, qualify for the tuition waiver slots allotted by the University of Maine System and the Maine Community College System. However, there is a separate waiver program that also applies to Indian children, and to qualify the youth must be:
  - i. A member of a Federal, State, or Provincially recognized tribe, or
  - ii. A direct descendent of one of those tribes (either a child or grandchild).

**Note:** To access information, the caseworker or youth will contact the university directly to complete the paperwork and/or talk to the tribe's child welfare caseworker.

**Resource Homes.** The approval of Indian resource homes either on the reservation or within other tribal lands is conducted by the tribe or band, with the exception that if a family requests and the tribe agrees, OCFS can complete the home study and licensing process. For Indian families not residing on the reservation or other tribal lands, the process can be conducted by either the tribe or band, if they choose, or they can request that OCFS conduct the licensing of the home.

If a resource home is approved by the tribe or band, it will be accepted as an approved resource home and entered into the child welfare information system as a tribally approved home when the following has occurred:

- a. The tribe or band has completed a home study and the family has met the approval standards developed by the tribe.
- b. The tribe or band has forwarded a copy of the home study, including a summary and recommendation section, to the OCFS Resource Unit Supervisor.
- c. The background checks have been completed and forwarded to the OCFS Resource Unit Supervisor. The background checks will meet legal standards to qualify to be a resource parent and will include:
  - i. A State Bureau of Investigation (SBI) and Sex Offender Registry (SOR),
  - ii. A criminal background check through the tribal legal system,
  - iii. A fingerprint check in accordance with the Adam Walsh law,
  - iv. BMV records, and
  - v. A child protective background check through both the state of Maine OCFS and tribal child welfare.
  - vi. The tribe or band may opt to have OCFS complete the background checks. If this is done, the tribe will still provide OCFS with the tribal criminal background check and tribal child protective check.

**Note:** If a child is in the custody of the state, the reimbursement rate follows [3.6 Levels of Care Policy](#) regardless of who approved/licensed the resource home. If a tribally approved home wants to take a placement that does not qualify under ICWA, additional licensing steps will be required as outlined in OCFS Child Welfare policy [5.1 Resource Home Licensing](#).

## VI. POLICY SUPERSEDES

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III. A. Indian Child Welfare Policy effective February 1, 2016

## VII. LINKS TO RELATED POLICIES

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- [2.2. Child Protection Investigation Policy](#)
- [7.1 Family Team Meeting Policy](#)
- [3.6 Levels of Care Policy](#)
- [3.9 Youth Transition Services Policy](#)
- [5.1 Resource Home Licensing Policy](#)

## VIII. APPENDICES

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[Appendix A: Contact Information for Federally Recognized Tribes in Maine](#)  
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[Appendix D: Petition with ICWA Directions](#)  
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[Appendix F: Active Efforts](#)  
[Appendix G: Intergovernmental Agreement: Houlton Band of Maliseet Indians and State of Maine](#)  
[Appendix H: Child Welfare Agreement Between the Maine Department of Human Services and The Penobscot Indian Nation](#)  
[Appendix I: Truth and Reconciliation Commission \(TRC\) Findings](#)

**Note:** The hyperlinks to these documents only work on DHHS issued computers. If you would like to request a copy of these documents, please email your request to:  
[OCFSPolicyTraining.DHHS@maine.gov](mailto:OCFSPolicyTraining.DHHS@maine.gov)