

## Review of Native American Children in State Custody

While improvements between Maine's tribal communities and the state child welfare system have been made, both systems recognize the need to further this work. Improving outcomes for native children and families will only occur if these systems improve their collaboration beginning at the time of report. While anecdotally it is believed that the state system asserts control over a case, versus co-managing these cases with their tribal child welfare partners, it became evident that a review of the native children in state custody would be beneficial to provide both systems with real data in terms of the current practice.

In the fall of 2009, the ICWA Workgroup (composed of tribal and state child welfare staff) developed a process by which the 24 native children in state custody would be reviewed by a team of two people that consisted of a Tribal Child Welfare staff member and Performance & Quality Improvement Specialist from the Office of Child & Family Services. This review consisted of:

- Development of the review tool by the ICWA Workgroup
  - This tool was comprehensive in terms of starting the review for tribal involvement at the time of report, through the assessment period and then during the time the child has been in foster care.
  - Key focus areas were notification by DHHS of involvement, the degree of contact between the state caseworker and tribal caseworkers, involvement in the Family Team Meeting process, involvement in placement of children and involvement in the child's case plan as well as permanency planning.
- Access & training of the MACWIS system to Tribal Child Welfare staff
- Case review of the assigned child by the tribal child welfare staff and PQI Specialist using the review tool
- Reviews aggregated with results provided to the ICWA workgroup for further discussion, dissemination and/or recommendations for next steps

While 28 children were identified in the state MACWIS system, 4 children from the Indian Township community were not census eligible therefore ICWA did not apply. These cases were still reviewed for cultural considerations and although the information is included in the narrative portion of this report the data was not aggregated.

Demographics:

- Of the cases reviewed, the dates of initial reports ranged from 2001 through 2009:

<b>Year of Report</b>	<b>Number of children</b>
2001	3
2002	2
2006	3

2007	1
2008	7
2009	8

- In terms of where the cases originated from by OCFS Districts:

OCFS District	Number of Children
1	1
2	4
5	3
6	4
7	5
8	7

- Length of time in foster care:

Length of time in foster care	Number of Children
1-<2 years	12
2-<3 years	6
3-<4 years	1
5+ years	5

**Outcome:**

The review tool was organized in terms of reviewing a number of areas during the assessment phase and then again following the child’s entry into foster care.

Assessment Review Outcomes:

- In 50% of the cases reviewed, intake asked if ICWA applied to the family.
- In 79% of the cases reviewed DHHS notified the tribe by phone.
- In only 58% of the cases was it evident that DHHS staff tried to involve the tribal child welfare staff at the beginning of the assessment in terms of going out with the state caseworker.
  - In those cases where there was a delay in contacting the tribal child welfare caseworker, the time ranged from 12 days to 16 months. In one case it was not evident that contact was ever made and, in a second case, the documentation indicated a delay of 16 months.
- Family Team Meeting- In order for a ‘yes’ to be prescribed to this series of questions, it would need to be evident that the activity occurred in every FTM:
  - In the cases of 8 children there was no evidence of a FTM being held.
  - In the cases of 3 children, the documentation indicated that a FTM was not held until 2.5 years into the case.

- Of the remaining cases, only 69% of those indicated that tribal child welfare staff had been invited to the Family Team Meeting.
  - There was no evidence that state child welfare workers engaged with tribal child welfare staff in terms of co-facilitation of those meetings, asking tribal staff about other people who should be invited or asking if there were other agenda items to discuss. There was only 1 case where additional members of the tribal community were invited to the FTM.

Foster Care Review Outcomes:

- It was evident that in the majority of cases child welfare staff notified tribal staff of the filing of the petition by phone or letter. There was one case where there was a face to face contact around this and three where there was no documentation of any notification.
- In 92% of cases reviewed, there was evidence that the choice in placement for the children was a joint activity between tribal and state child welfare workers.
- 50% of the children reviewed were placed in a Native American Foster Home.
  - Only 25% of those children not placed in a native home were placed with a non-native relative, the rest were placed in other foster care settings.
  - Of those children placed in a non native resource parent or relative placement, 58% were brought to cultural events.
  - It should be noted that 2 of the children reviewed were placed in a residential program.
- Family Team Meetings- In order for a ‘yes’ to be prescribed to this series of questions, it would need to be evident that the activity occurred in every FTM:
  - Only 41% of the reviews indicated that tribal child welfare staff had been invited to the Family Team Meeting.
    - In the 8 cases the tribe was included in setting the time/date for the FTM.
    - In all cases but two, the role of the tribal child welfare caseworker in the FTM was one of participant versus co-facilitator.
    - There was no evidence that state child welfare workers asked tribal staff about other people who should be invited or asking if there were other agenda items to discuss. There was only 1 case where this was evident.
- In terms of case planning in only 41% of the cases reviewed was it evident that tribal child welfare staff were involved in planning for the child/family.
- In 66% of the cases reviewed, it was evident that tribal child welfare was involved in permanency planning however it was only evident in 54% of the cases that tribal child welfare staff were present at all court proceedings. (In considering this area of question, credit would have been given had there been evidence that tribal child welfare was notified but unable to attend)
- Contact (phone &/or face-to-face) between tribal child welfare and the DHHS caseworker broke down as follows:

- 41% of the cases found at least month contact
  - 12% of the cases found evidence of contact every other month
  - 33% of the cases found evidence of contact less frequently than every other month
  - 12% of cases found no evidence of contact with tribal child welfare staff
- Reviewers were asked to assess for any evidence of cultural bias/white privilege on the part of DHHS staff and there were no incidences of this found during the review.

Of the five cases reviewed from the Indian Township community:

- One case was reviewed as ICWA eligible although the record seems to indicate otherwise. In this case there was a 2.5 month delay in the DHHS contacting the Houlton Band of the Maliseets for purpose of confirming the father's claim that he was 75% Maliseet. The enrollment clerk reported that the father was not a member of their tribe and referred the caseworker to the Passamaquoddy Tribe where he is a member. There is no documentation that reflects the tribe was contacted to confirm the status. The child is placed in a non native home with his non native sibling. The question is not whether the father is on the census but whether or not he is census eligible. While the child is not listed with the Maliseet Band, he is still eligible to be enrolled. All Maine tribes allow only one census even though an individual may be eligible for several.
- In general the review of the five cases found that in the documentation by DHHS caseworkers exploring if ICWA applies, it is often stated that the person in question is not on the census therefore ICWA does not apply. Caseworkers need to be inquiring and documenting census eligibility before making the ICWA determination. To avoid any confusion it is recommended that DHHS obtain eligibility status in writing from the identified tribe.
- All four children for whom ICWA did not apply have significant ties to the Native American culture. OCFS needs to assure that these ties are considered when working with these children as these are children who are considered by the community as members of the tribe even though on paper they may not qualify.

## **Conclusions**

As noted at the onset, anecdotally it was believed that OCFS caseworkers assert control over the cases involving Native American children versus engaging in a process of co-management with tribal child welfare staff. The outcome of the review confirms that belief.

There was also a belief that, while historically child welfare caseworkers haven't included tribal staff, the state agency has improved in its collaboration with tribal staff on the 'newer' cases. This review dispels that belief as 62.5% of the cases reviewed were those that entered the state child welfare system in 2008 & 2009.

Recommendations:

- ICWA policy be finalized and disseminated along with the expectation that child welfare supervisors will review and discuss this policy in individual unit meetings.
- The ICWA policy should be reviewed in a state wide supervisor meeting with participation of a couple of the ICWA Workgroup members.
- District ICWA Specialist be selected, trained and should participate in a meeting with the ICWA Workgroup in order to have a fuller understanding of the importance of their role in the districts.
- Family Team Meeting policy needs to clearly reflect that, in cases involving native children, tribal child welfare caseworkers are to be co-facilitators and involved in scheduling, setting an agenda and identifying invitees to the meeting.
- DHHS should obtain eligibly status in writing from the identified tribe to confirm the child's eligibility.
- Even if a child is not census eligible, the state and tribal child welfare systems need to collaborate to ensure that the child's cultural needs are being met and not overlooked because the child 'is not an ICWA case'.