



Child Custody, Visitation and Child Support FAQ

- 1. What is child support?** When parents separate, they still have shared rights and responsibilities as to their children. The most basic of these responsibilities is supporting their children so they have food, clothing, shelter and health care insurance. Child support is a payment made by one parent to another for the support of a child. The amount of the payment is based on a percentage, determined by law, of the paying parent's income.
- 2. What is legal custody?** Under Oneida law, custody and legal custody are used interchangeably and mean the same thing. Legal custody means the right to make major life decisions for a child including: education, health care, religion, military service, etc. Legal custody DOES NOT mean one parent physically being with or living with his or her child. **Joint legal custody** means both parents have the right to make major life decisions for the child. **Sole legal custody** means only one parent has the right to make major life decisions. Under Oneida law, there is a presumption that joint legal custody is in the best interest of the child.
- 3. What is physical placement?** Physical placement means the time when a parent or caregiver is visiting with and caring for his or her child. Physical placement may be for a short time (1 hour) or several weeks or months. (Physical placement and visitation are the same thing and are used interchangeably.) **Primary placement** refers to the parent or individual who has physical placement of the child the majority of the time.
- 4. How can I get my existing custody and physical placement order changed so I can see my child(ren) more?** If you are able to reach agreement with the other parent, your agreement can be written up and shared with the OTJS. The OTJS will usually grant the change when the parents are in agreement, sometimes without a hearing.

If you are not able to reach agreement with the other parent, then you can file a motion with the OTJS. (Motion is another word for request.) There is a form for making this request. See the Oneida Tribal Judicial System (OTJS) Clerk to obtain a copy of the form. It is also available on the Internet at the OTJS web site.

- 5. I am paying too much support. How do I get my payment reduced?** In order to get your payment reduced, you must file a motion with the OTJS. (Motion is another word for request.) The judicial officer will then consider your request. In order to have your support changed, you will need to show there has been a *substantial change* in your circumstances which justifies a reduction in support.



6. **I am not receiving enough support from ex. I know s/he is receiving cash under the table. How can I get my support check increased?** You should contact the Oneida Child Support Enforcement Agency to review other options. You can file a motion with the OTJS seeking to have support increased. (Motion is another word for request.) The judicial officer will then listen to your request. You will need to bring evidence of your assertion to the hearing. Examples of evidence are testimony from witnesses or copies of documents.
7. **What is the amount child support based on?** Support payments are calculated using a set of percentages set by law. The percentage is then multiplied by your gross income. The percentage standard for one child is 17%. For example, if you earn \$25,000 per year, your support payment for one child would be \$4,250 per year because 17% of \$25,000 = \$4,250. This amount is often divided by the number of pay periods and then deducted from a person's wages. Special circumstances may lead to an increase or decrease in the support payment.
- If you are not working, unemployed, incarcerated or disabled or have no income for some other reason, you are still legally obligated to support your child. The amount of support will vary with each person's circumstances. If you do not pay support, the unpaid amount will accumulate as arrears.
8. **What are child support arrears?** Child support arrears are the amount of child support which a payer is obligated to pay but has not.
9. **I just came from my hearing before the OTJS. I think the judicial officer made a mistake and I disagree with the order. What are my options?** You can file a motion explaining the mistake and asking for reconsideration. (Motion is another word for request). Another option is to file an appeal. Talk to the Appellate Clerk of Court to obtain the form for filing an appeal.
10. **Why was my case transferred from state court to OTJS?** When your case started, the Tribe did not have its own child support laws. Now that the laws are in place, the Tribe is exercising its jurisdiction by having all cases with a tribal member as a party transferred to the OTJS.
11. **I want to challenge the transfer of jurisdiction from county court to OTJS. How do I do that?** You should have received a notice in the mail giving you the chance to object to a proposed transfer of jurisdiction from County Circuit Court to the OTJS. Follow the instructions on the notice.
12. **The other parent of my children is not letting me see my kids. What can I do?** Assuming you have rights to periods of physical placement, you can try to work it out with the other parent. If that does not work, the Oneida Tribal Judicial System has a form which you can file with the OTJS which will bring your issue before a judicial officer. The form is called Motion to Enforce an Order for Custody and Physical Placement.



Some parents do not have physical placement rights. You will need to check your current order to see whether you have a right to physical placement. If you do not and you would like to have visitation with your child, you can file a Motion for Modification of Custody and/or Physical Placement. There is a form available from the OTJS Clerk.

13. **The other parent of my children is keeping the children longer than what is stated in the order. What can I do?** Discuss your concerns with the other parent. If you are not able to work things out with the other parent, you may seek to enforce your existing order through the Oneida Tribal Judicial System. The OTJS Clerk has a form available which you can fill out and file.
14. **The other parent of my children is not current with child support. Can I deny the other parent visitation?** No you cannot deny visitation. Child support is separate from custody and visitation issues. Likewise, the other parent must continue to pay support even if there is a disagreement over visitation.
15. **The other parent is denying my visitation. Can I stop paying support?** No, you cannot stop paying child support. Child support is separate from visitation. You may wish to file a motion with the OTJS requesting the OTJS to enforce your custody and visitation rights. (Motion is another word for request.) The OTJS has a form for parents who believe they are being denied their rights and wish to seek enforcement of their existing order.
16. **I just moved here from another reservation with my child. The other parent of my child is not paying support. What can I do?** You can file an application with the Oneida Child Support Enforcement Agency (OCSEA). They can work with the agency where your court order started. If you do not have an order the OCSEA has the ability to work with you to obtain one which may involve working with the agency that has jurisdiction over the case.
17. **I am a grandparent. My child and his/her partner are not getting along. I want to be sure to be able see my grandchild(ren). What should I do?** You may seek visitation rights. Under Oneida law, Sec. 79.11, individuals other than parents may request visitation. If you wish to make such a request, you can use an OTJS form which is filed with the Court. You must also share a copy of your request with all parties to the current case.
18. **What is Peacemaking? Why would I use it for my child custody case?** The OTJS encourages peacemaking when parents are not able to agree on custody. Peacemaking often brings peace and harmony back into the relationship, which is necessary to raise a healthy child. Peacemaking is a traditional process, which gives the parents control over the outcome of their issue, which is not the case in court. Parents write their agreement and it is held on file with the OTJS and OCSEA. This agreement is a legally binding contract.



19. **I have a current order addressing support, custody and physical placement; I have primary placement of my children. However, I am moving, with my children, to California next month. The other parent is staying here. Do I need to do anything before I move?** Oneida law does not require you to do anything. However, if you are moving with the intent of denying visitation to the other parent, you may be in violation of federal law if you cross state lines. Additionally, if your custody and physical placement order requires the other parent to have periods of physical placement with the children, you will be in violation of the order if your actions prevent the physical placement with the other parent from taking place. You should also check your order for any specific terms which address this issue.

In order to remain in compliance with your OTJS order, you can either: 1) Make an agreement with the other parent or 2) Before you move, seek to have your order modified so you can remain in compliance after you move. If you make an agreement with the other parent, the agreement must be put in writing and submitted to the Oneida Tribal Judicial System for approval by a judicial officer (agreement is another word for stipulation).

20. **When I move to another state, will the Oneida Child Support Agency continue to service my case?** The Oneida Child Support Enforcement Agency will continue to service your case. If the payer is under the jurisdiction of the Oneida Tribe there will be no change. If the payer moves, the Oneida Child Support Agency will seek assistance from the jurisdiction where the payer is living.
21. **I just found out the other parent of my children is moving to Florida. The other parent is taking the children. I am worried I will not see my children. What can I do? Do I still have to pay support when my children live so far away?** Yes, you still have to pay child support as ordered by the OTJS. As for visitation, first you should talk with the other parent and try to work out an arrangement. If your current order calls for you to have regular periods of physical placement (e.g. every other week), the other parent is still required to honor that schedule unless it is changed by the OTJS. If the other parent does not honor the court order, you can file a motion with the OTJS requesting enforcement of the order. Check your order as it may contain specific provisions addressing this issue.
22. **I am concerned my support money is not going for the benefit of my children. What can I do?** As a payer, you do not have control over where the money is spent. If you have a sincere belief based on something you have seen that your children are not housed, clothed and fed for reasons other than poverty, you can notify county or tribal social services. Except in extreme circumstances, the law does not require the parent receiving child support payments to provide an accounting of how child support is being spent.



- 23. When my child returned from visitation with the other parent s/he had bruises on his face. What should I do?** If there is an immediate concern over your child's health and safety you should call 911 or take the child to a doctor. You should have a discussion with the other parent as to how the bruising occurred. If you still have concern, you should contact your local Child Protective Services or the Oneida Indian Child Welfare Department.
- 24. The Guardian ad Litem is asking me a lot of personal questions I don't want to answer. Do I have to answer them?** Not necessarily; however it is almost always in your best interest to cooperate with the Guardian ad Litem. A Guardian ad Litem (GAL) is a person appointed by the judicial officer to represent the best interests of the children. The GAL will be investigating the case and making a recommendation to the judicial officer on what is in the best interest of your children including how legal custody and physical placement should be shared between you and the other parent.
- 25. Can I get an attorney paid for by the Tribe?** At this time, the Tribe does not provide attorneys for those who appear before the OTJS. You may contact the Legal Resource Center at 920-496-5310. The LRC has an attorney available for a reduced fee.
- 26. Do I have to get an attorney for my child support case?** No, however many people find attorneys helpful as they can advocate for you and are knowledgeable about the law and can provide legal advice. Lay advocates are also available.
- 27. Where can I get an attorney?** There are many ways to find an attorney. The Tribe's Legal Resource Center provides an attorney at a reduced fee. Call 920-496-5310. Some people find an attorney by word of mouth, asking friends and family for recommendations. The phone book has a listing of attorneys. The State Bar of Wisconsin has a Lawyer Referral and Information Service: 1-800-362-9082. You can also access the same information at <http://www.legalexplorer.com/lawyer/lawyer.asp>.
- 28. I don't agree with the decisions the other parent is making about my child's religion/education/piercings, etc. What can I do about it?** First, try to talk to the other parent about the issue. If you are not able to reach agreement, you may want to consider filing a motion with the OTJS. A motion is a written request to the OTJS where the person filing asserts there is a violation of law or an OTJS order and asks the OTJS to remedy the violation.
- 29. Are phone appearances allowed before the OTJS?** The OTJS permits phone appearances, however, they must be approved by the judicial officer in advance. Contact the Clerk of Court.

G:\APPEALS\Brochure\Family Law FAQ - print version.doc



