



## **LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center

June 7, 2017 9:00 a.m.

### **I. Call to Order and Approval of the Agenda**

### **II. Minutes to be approved**

1. May 17, 2017 LOC Meeting Minutes

### **III. Current Business**

1. Comprehensive Policy Governing Boards, Committees and Commissions Amendments
2. Cemetery Law Amendments
3. GTC Meetings Law
4. Sanctions and Penalties Law
5. Petition: Child Care Department Consumer Complaint Policy
6. Administrative Rulemaking Amendments
7. Children's Code
8. Business Committee Meetings Law
9. Workplace Violence

### **IV. New Submissions**

### **V. Additions**

### **VI. Administrative Updates**

1. Oneida Nation Seal and Flag Rules Extension
2. Real Property Rules Extension
3. Legal Resource Center E-Poll
4. Hunting, Fishing and Trapping E-poll
5. LOC Update - Kalihwisaks
6. Oneida Housing Authority Home Ownership Rule Certification (Handout)

### **VII. Executive Session**

### **VIII. Recess/Adjourn**



**Oneida Nation**  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54155-0365  
[Oneida-nsn.gov](http://Oneida-nsn.gov)



## **LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center

May 17, 2017 1:30 p.m.

**Present:** Tehassi Hill, Jennifer Webster, Fawn Billie, David P. Jordan

**Others Present:** Jennifer Falck, Candice Skenandore, Clorissa Santiago, Maureen Perkins, Tani Thurner, Rae Skenandore, Krystal John, Robert J. Collins II, Bonnie Pigman, Mike Debraska, Gene Schubert, Leyne Orosco, Cathy Bachhuber

### **I. Call to Order and Approval of the Agenda**

Tehassi Hill called the May 17, 2017 Legislative Operating Committee meeting to order at 1:39 p.m.

Motion by David P. Jordan to adopt the agenda, seconded by Fawn Billie. Motion carried unanimously.

### **II. Minutes to be approved**

#### **1. May 3, 2017 LOC Meeting Minutes**

Motion by Fawn Billie to approve the May 3, 2017 LOC meeting minutes; seconded by Jennifer Webster. Motion carried, with David P. Jordan abstaining.

### **III. Current Business**

#### **1. Petition: Child Care Department Consumer Complaint Policy (00:55-01:30)**

Motion by Jennifer Webster to review and accept the draft Child Care Department Consumer Complaint law and send for analysis to be completed by June 7, 2017; seconded by David P. Jordan. Motion carried unanimously.

#### **2. Children's Code (11:08-12:07)**

Motion by Jennifer Webster to accept the public meeting comments for the Child Welfare Law and defer to a work meeting; seconded by Fawn Billie. Motion carried unanimously.

#### **3. Legal Resource Center (01:52-11:02)**

Motion by Jennifer Webster to accept the emergency adoption packet for the Legal Resource Center law and forward to the Oneida Business Committee for consideration; seconded by Fawn Billie. Motion carried unanimously.

#### **4. General Tribal Council Meetings (12:09-12:39)**

Motion by David P. Jordan to approve an extension to June 7, 2017 for the legislative analysis for the General Tribal Council Meetings law to be completed; seconded by Fawn Billie. Motion carried unanimously.

#### **5. Administrative Rulemaking Amendments (12:43-13:12)**

Motion by Fawn Billie to approve an extension to June 7, 2017 for the legislative analysis for the Administrative Rulemaking amendments to be completed; seconded by David P. Jordan. Motion carried unanimously.

6. **Conflict of Interest Permanent Amendments** (13:14-13:41)

Motion by David P. Jordan to approve the updated public meeting packet for the approved June 5, 2017 public meeting for the Conflict of Interest permanent amendments; seconded by Fawn Billie. Motion carried unanimously.

**IV. New Submissions**

1. **All-Terrain Vehicle Law Amendments** (13:50-17:28)

Motion by David P. Jordan to add each of these laws to the Active Files List as a high priority, assign Tehassi Hill as the sponsor, approve the public meeting packet, in addition to the Tribal Environmental Response law for June 15, 2017; seconded by Fawn Billie. Motion carried unanimously.

2. **Hunting, Fishing and Trapping Law Amendments** (13:50-17:28)

Motion by David P. Jordan to add each of these to the Active Files List as a high priority, assign Tehassi Hill as the sponsor, approve the public meeting packet, in addition to the Tribal Environmental Response law for June 15, 2017; seconded by Fawn Billie. Motion carried unanimously.

3. **Public Use of Tribal Land Law Amendments** (13:50-17:28)

Motion by David P. Jordan to add each of these to the Active Files List as a high priority, assign Tehassi Hill as the sponsor, approve the public meeting packet, in addition to the Tribal Environmental Response law for June 15, 2017; seconded by Fawn Billie. Motion carried unanimously.

4. **Water Resources Ordinance Amendments** (13:50-17:28)

Motion by David P. Jordan to add each of these to the Active Files List as a high priority, assign Tehassi Hill as the sponsor, approve the public meeting packet, in addition to the Tribal Environmental Response law for June 15, 2017; seconded by Fawn Billie. Motion carried unanimously.

5. **Well Abandonment Law Amendments** (13:50-17:28)

Motion by David P. Jordan to add each of these to the Active Files List as a high priority, assign Tehassi Hill as the sponsor, approve the public meeting packet, in addition to the Tribal Environmental Response law for June 15, 2017; seconded by Fawn Billie. Motion carried unanimously.

6. **On-Site Waste Disposal Ordinance Amendments** (13:50-17:28)

Motion by David P. Jordan to add each of these to the Active Files List as a high priority, assign Tehassi Hill as the sponsor, approve the public meeting packet, in addition to the Tribal Environmental Response law for June 15, 2017; seconded by Fawn Billie. Motion carried unanimously.

**V. Additions**

**VI. Administrative Updates**

1. **Domestic Animals Amendments E-Poll Results** (17:29-17:47)

Motion by Fawn Billie to accept the Domestic Animals Amendments e-poll results of May 5, 2017 into the record; seconded by David P. Jordan. Motion carried unanimously.

2. **Per Capita Rule No. 1 –Distribution Rule Certification** (17:53-18:11)

Motion by David P. Jordan to certify the Per Capita Distribution rule and forward to the Oneida Business Committee for review; seconded by Jennifer Webster. Motion carried unanimously.

3. **Hunting, Fishing and Trapping Rule Handbook Certification** (18:14-18:32)

Motion by Jennifer Webster to certify the Hunting, Fishing and Trapping Rule Handbook and forward to the Oneida Business Committee for review; seconded by David P. Jordan. Motion carried unanimously.

4. **FY17 semi-annual GTC Report** (18:38-19:05)

Motion by Fawn Billie to approve the Legislative Operating Committee FY17 semi-annual GTC Report and forward to the Secretary's Office; seconded by David P. Jordan. Motion carried unanimously.

**VII. Executive Session**

**VIII. Adjourn**

Motion by David P. Jordan to adjourn the May 17, 2017 Legislative Operating Committee meeting at 1:59 p.m.; seconded by Jennifer Webster. Motion carried unanimously.





Legislative Operating Committee  
June 7, 2017

# Comprehensive Policy Governing Boards, Committees and Commissions Amendments

<b>Submission Date:</b> 9/17/14	<b>Public Meeting:</b> 1/7/16
<b>LOC Sponsor:</b> Jennifer Webster	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This item was carried over into the current term by the LOC. Amendments were originally requested to: prohibit individuals from serving on multiple boards, committees and commissions at one time; set term limits; and prohibit Tribal employees from serving on Tribal boards, committees and commissions. Additional changes have been proposed in various other sections.*

**8/13/14 OBC:** Motion by Melinda J. Danforth to accept the HRD manager's interpretation on BC members and political appointments leaving office which is dated Aug. 12 to the Business Committee as information and assign the LOC to work to create laws and policies around elected officials and political appointments, seconded by Brandon Stevens. Motion carried with one abstention (Tina Danforth).

**9/10/14 OBC:** Motion by Lisa Summers to direct the Tribal Secretary's Office to send formal correspondence to the Land Claims Commission requiring them to submit their reports by Friday and to request the LOC to bring back a recommendation on how to amend the Comprehensive Policy Governing Boards, Committees, and Commissions to include the withholding of stipends payments to Boards, Committees, and Commissions who do not provide their reports in a timely manner, seconded by Fawn Billie. Motion carried unanimously.

**9/17/14 LOC:** Motion by Jennifer Webster to add the Comprehensive Policy Governing Boards, Committees and Commissions Amendments to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

*Note: Jennifer Webster will be the sponsor for this item.*

**4/22/15 OBC:** Motion by Lisa Summers to direct the Comprehensive Policy Governing Boards, Committees, and Commissions appointment process be sent back to the Legislative Operating Committee for amendments and to bring back a recommendation on clarifying the process, seconded by Fawn Billie. Motion carried unanimously.

**5/6/15 LOC:** Motion by Jennifer Webster to defer the Comprehensive Policy Governing Boards, Committees and Commission to a Legislative Operating Committee work meeting; seconded by David P. Jordan, motion carried unanimously.

**5/27/15 OBC:** Motion by Jennifer Webster to accept the report from the Secretary's Office as information and to request the LOC to make the necessary policy amendments to the Comprehensive Policy Governing Boards, Committees and Commissions to address this issue, seconded by Lisa Summers. Motion carried unanimously. (*under B.1. Vacancy Posting*)

**5/29/15 OBC:** Motion by Lisa Summers to send the issue of what to do with the entities that do not submit semi-annual reports to a Business Committee work meeting, seconded David Jordan. Motion carried unanimously.

**6/8/15:** *Work Meeting held.* Attendees: Danelle Wilson, Melanie Burkhart, Brandon Stevens, Rae Skenandore, David Jordan, Jacob Metoxen, Tehassi Hill, Fawn Billie, Jenny Webster, Kathy Metoxen, Candice Skenandore, Tani Thurner, Fawn Cottrell, Lynn Franzmeier, Daril Peters, Jordan Rasmussen

**8/19/15 LOC:** Motion by Jennifer Webster to defer the Comprehensive Policy Governing Boards, Committees and Commissions Amendments to the Legislative Reference Office for legislative analysis and to the Finance Department for a fiscal impact statement; seconded by David P. Jordan. Motion carried unanimously.

**10/21/15 LOC:** Motion by Fawn Billie to defer the Comprehensive Policy Governing Boards, Committees and Commissions Amendments to the sponsor to address the concerns and considerations and to prepare for a December 3, 2015 public meeting; seconded by David P. Jordan. Motion carried unanimously.

**11/4/15 LOC:** Motion by Jennifer Webster to forward the draft of Comprehensive Policy Governing Boards, Committees and Commissions Amendments with the noted changes to a public meeting held on December 3, 2015; seconded by Tehassi Hill. Motion carried unanimously.

**12/16/15 LOC:** Motion by David P. Jordan to enter the Administrative Rulemaking Law and Comprehensive Policy Governing Boards, Committees and Commissions Amendments e-poll into the record; seconded by Jennifer Webster. Motion carried unanimously.

**12/23/15 LOC:** (*under Review update regarding Complaint # 2015-CC-08*)

Motion by Lisa Summers to accept as information and to defer this item to the Legislative Operating Committee for implementation. Motion failed for lack of support.

Motion by Trish King to accept the updates as information and to request the recommendation of the tribal e-mails for the Boards, Committees, and Commissions be included in the amendments to the Comprehensive Policy Governing Boards, Committees, and Commissions to the Legislative Operating Committee, seconded by Lisa Summers. Motion carried unanimously.

**1/7/16:** *Public Meeting held.*

**2/3/16 LOC:** Motion by David P. Jordan to accept the Public Meeting comments and defer consideration of the comments to a work meeting to be held on Friday February 5, 2016 at 10:00 am; seconded by Tehassi Hill. Motion carried unanimously.

**2/5/16:** *Work meeting held.*

**2/10/16 OBC:** Motion by Jennifer Webster to appoint Bradley Graham to the Oneida Personnel Commission, seconded by Melinda J. Danforth. Motion carried with one opposed and three abstentions.

*For the record: Councilman Brandon Stevens stated I abstained for family conflict of interest, but as well as just to further go on, we are amending the Comprehensive Policy to reflect how this process would change in the near future on what happens next in these instances which have come up and will come up if we don't address them.*

**3/2/16 LOC:** Motion by Jennifer Webster to accept the updated draft of the Comprehensive Policy Governing Boards, Committees and Commissions Amendments and to forward the draft to the Legislative Reference Office for an updated legislative analysis; seconded by Tehassi Hill. Motion carried unanimously.

*For the record:* The changes to the Comprehensive Policy Governing Boards, Committees and Commissions Amendments are technical rather than substantive and do not require a second public meeting.

**4/13/16 OBC:** Motion by Lisa Summers to adopt resolution 4-13-16-A Revising the Standard Oath for Elected and Appointed Positions, seconded by Fawn Billie. Motion carried unanimously

Motion by Lisa Summers to send the Comprehensive Policy Governing Boards, Committees and Commissions section 8-4(d) to the Legislative Operating Committee to bring back a recommendation on how to clarify reporting requirements for Boards, Committees, and Commissions, seconded by Fawn Billie. Motion carried unanimously. (*Motion under C.1. Accept Land Commission FY '16 1st quarter report*)

**9/20/16** *Work meeting held-* Jenny Webster, Tani Thurner, Pat Garvey, Jen Falck attended. LRO Director will work with Finance Office to identify stipend types and amounts for boards, committees, and commission. Then work group will review that and meet again to discuss the discrepancies between what this draft says and what other bylaws say about stipends.

**11/14/16:** *Work Meeting held.* Present: Brandon Stevens, Tani Thurner, David Jordan, Jenny Webster, Candice Skenandore, Pat Garvey, Cathy Bachhuber. Policy decisions were made and an updated draft and analysis are forthcoming.

**11/29/16:** *Work Meeting held.* Present: Fawn Billie, Brandon Stevens, Clorissa Santiago, Tehassi Hill, Tani Thurner, Jenny Webster, David Jordan, Jo Anne House, Candice Skenandore, Lisa Liggins, Jen Falck. Meeting was facilitated by Jessica Wallenfang. This was a facilitated meeting designed to discuss; Sanctions & Penalties, Removal, Code of Ethics, and Comprehensive Policy simultaneously. The group reviewed each law or draft for similarities, and discussed shared elements. The group asked that 1) the LRO complete that work, 2) then check with Jenny Webster as the sponsor of Comprehensive Policy, and 3) schedule another work meeting.

**1/20/17:** *Work Meeting Held.* Attendees: Brandon Stevens, Jennifer Webster, Jennifer Falck, Tani Thurner, Candice Skenandore. Next steps: schedule meeting with LOC to discuss accountability memo, Removal Law and Sanctions & Penalties.

**2/17/17:** *Work meeting held.* Attendees include Fawn Billie, Jennifer Falck, Leyne Orosco, Brandon Stevens, Tani Thurner, Jennifer Webster, Tehassi Hill, Candice Skenandore, Cathy Bachhuber

#### **Next Steps:**

- Approve the public meeting packet and forward the Governance of Boards, Committees and Commissions law to a second public meeting to be held on June 29, 2017.
- Forward to the Finance Office for a fiscal analysis.

NOTICE OF  
**PUBLIC MEETING**

TO BE HELD  
**Thursday, June 29, 2017 at 12:15 p.m.**  
IN THE  
**OBC CONFERENCE ROOM**  
**(2<sup>nd</sup> FLOOR—NORBERT HILL CENTER)**

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

**TOPIC: AMENDMENTS TO THE COMPREHENSIVE  
POLICY GOVERNING BOARDS, COMMITTEES AND  
COMMISSIONS**

**This is a proposal to amend an existing Tribal law which would update various requirements for the Nations boards, committees and commissions, including:**

- ◆ The appointment process
- ◆ The requirements for what must be contained in each entity's by-laws
- ◆ Adding new language to address what happens when a person is elected or appointed to an entity but then fails to meet the qualifications required for members
- ◆ Adding a detailed process for reporting to GTC
- ◆ Updating requirements related to posting for vacant positions
- ◆ Removing language that overlaps with requirements already found in the Code of Ethics and Conflict of Interest Policy

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings) or contact the Legislative Reference Office.

**PUBLIC COMMENT PERIOD  
OPEN UNTIL FRIDAY, JULY 7, 2017**

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

**Legislative Reference Office**  
**PO Box 365 Oneida, WI 54155**  
**LOC@oneidanation.org**  
**Phone: (920) 869-4376 or (800) 236-2214**  
**Fax: (920) 869-4040**



## Governance of Boards, Committees and Commissions Amendments Legislative Analysis

### SECTION 1. BACKGROUND

REQUESTER: Former LOC	SPONSOR: Jennifer Webster	DRAFTER: Taniquelle Thurner	ANALYST: Candice E. Skenandore
<b>Intent of the Amendments</b>	Amendments were requested to prohibit individuals from serving on multiple boards, committees and commissions at one time as well as set term limits and prohibit employees from serving on boards, committees and commissions.		
<b>Purpose</b>	Govern the standard procedures regarding the appointment and election of persons to boards, committees and commissions as well as the creation of bylaws, maintenance of official records, compensation and other items that relate to boards, committees and commissions [See <i>Governance of Boards, Committees and Commissions</i> , 1 O.C. 105.1-1].		
<b>Affected Entities</b>	Anyone that serves on a board, committee or commission. This Law does not apply to the Nation's corporations [See <i>Governance of Boards, Committees and Commission</i> , 1 O.C. 105.1-1]. The Nation's Secretary or designee, Oneida Business Committee (OBC), Enrollments Department, Oneida Election Board, Nation's Chairperson, Purchasing Department, Trial Court, Nation's Treasurer, Management Information Systems Department (MIS)		
<b>Affected Legislation</b>	Oneida Election Law; entities' bylaws; Removal Law; Open Records and Open Meetings law; amendments to bylaws must conform to any law or applicable rule; Nation's applicable computer and media related laws, policies and rules; Code of Ethics; Conflict of Interest law; sanctions and penalties pursuant to applicable law. This Law does not supersede the Oneida Nation Gaming Ordinance in regards to the Oneida Gaming Commission [See <i>Governance of Boards, Committees and Commissions</i> , 1 O.C. 105.2-4].		
<b>Enforcement/Due Process</b>	Those that violate any law of the Nation may be subject to the removal and/or sanctions and penalties [See <i>Governance of Boards, Committees and Commissions</i> , 1 O.C. 105.15-1]. The Removal Law addresses how an elected member is removed. A proposed sanctions and penalties law is currently being developed and will house the processes for imposing sanctions and penalties. The OBC can adopt additional and alternative enforcement mechanisms by resolution to impose on entities for noncompliance [See <i>Governance of Boards, Committees, and Commissions</i> , 1 O.C. 105.15-5].		
<b>Public Meeting</b>	A public meeting was held on July 18, 2013 and January 7, 2016; however, the LOC may want to consider holding another public meeting due to substantial changes.		

### SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The original intent of the requested amendments was to prohibit individuals from serving on multiple boards, committees and commission at one time as well as set term limits and prohibit employees from serving on boards, committees or commissions. These proposed amendments do not satisfy the original intent of the request.

### SECTION 3. CONSULTATION

A. The Nation's Secretary, the Election Board, Finance, Trial Court, Oneida Law Office, BC Support Staff Office and two certified public accountants were consulted in the development of this legislative analysis. The Oneida Law Office was consulted in drafting these amendments.

B. The Oneida Election Law, Oneida Travel and Expense Policy, Open Records and Open Meetings law, Code of Ethics, Conflict of Interest, Budget Management and Control and Removal Law were reviewed when developing this analysis as well as the following bylaws:

- Anna John Nursing Home Board
- Arts Board
- Audit Committee
- Election Board
- Environmental Resource Board
- Finance Committee
- Land Claims Commission
- Land Commission
- Legislative Operating Committee
- Pardon and Forgiveness Committee
- Personnel Commission
- Police Commission
- Pow wow Committee
- School Board
- South East Oneida Tribal Services (SEOTS) Board

### SECTION 4. PROCESS

A. Thus far, these amendments have followed the legislative process set forth in the Legislative Procedures Act.

B. This item was carried over from the previous LOC term and was re-added to the active files list on September 17, 2014. Since then, a work meeting was held in 2015, four work meetings were held in 2016 and two work meeting held in 2017.

### SECTION 5. CONTENTS OF THE LEGISLATION

**A. Applications.** An application is a form by which a person seeks to be appointed to filled a vacancy or be considered as a candidate for an election to serve on an entity. This Law requires the OBC to approve the application that must be generated by the Secretary in which all applicants must use. Section 105.4-1 describes what must be included in the application such as the name, address, birth date, phone number, the position applied for and more. Completed applications must be filed with the Secretary by 4:30 p.m. of the deadline date. Applications can be sent by mail so long as the envelope is postmarked by the deadline date and received within five business days of the deadline. The Election Board will verify all applications for elected positions and the Secretary will verify all applications for appointed positions to ensure that eligibility and qualification requirements are met [*See Governance of Boards, Committees and Commissions, 1 O.C. 105.4-2 & 105.4-3*]. The Election Board and Secretary must provide notice to all applicants within 15 business days from the application deadline except when good cause requires the Election Board and Secretary to go outside these time limits. This notice informs the applicant of the date

the application was filed, whether the applicant meets the eligibility requirements if he/she will be considered, notice that further information may be requested, the duties of the position being sought and language that specifies that stipends paid to members of entities is reported income [See *Governance of Boards, Committees and Commissions, 1 O.C. 105.4-4*]. If there are insufficient applicants after the deadline has passed, the Secretary can repost a vacancy so long as the OBC approval is received. If reposting is conducted, all prior applicants that filed applications prior to the deadline must be considered [See *Governance of Boards, Committees and Commissions, 1 O.C. 105.4-5*].

**B. Vacancies.** Section 105.5 of this Law discusses vacancies, more specifically, when vacancies occur and when and where a notice of a vacancy must be posted. Entities have to notify the Secretary as soon as any position has or will become vacant. The Secretary must receive OBC approval to post a notice of vacancy. Notice of vacancies must be placed in the official media outlet as well as any reasonable location request by the entity. If there is an error with the notice, the Secretary can repost the notice as soon as practicable but the reposting will trigger the start of a new timeline. Reposting a notice due to error does not require OBC approval but the Secretary must notify the OBC at the next available OBC meeting. If reposting is conducted, all prior applicants that filed applications prior to the deadline must be considered.

**C. Appointed Entities.** The OBC makes all appointments at regular or special OBC meetings. The procedures for making appointments can be found in section 105.6-2 of the Law and include requiring the Secretary to provide the list of eligible candidates and a summary of their qualifications to the Chairperson within five business days after the candidate is provided notice. The Chairperson or his/her designee must select an applicant within 30 days and forward that decision, along with the list of eligible applicants to the OBC. The OBC will either accept or reject the applicant, if rejected, the OBC must 1) direct the Chairperson to make another recommendation, 2) select and approve another applicant if the Chairperson is unable to select another applicant in which the OBC agrees with, or 3) if the OBC cannot select and approve an applicant, the OBC must direct the vacancy be re-posted. Once a decision is made regarding the appointment, the Chairperson will forward a list of all applicants to the Secretary for final decision regarding the selection and the Secretary will notify all applicants of the final status of their application. All appointments are official upon taking the oath at an OBC meeting and appointed entities serve at the discretion of the OBC meaning a member can have his/her appointment terminated by the OBC by a 2/3 vote of the entire OBC. A termination of appointment is not appealable [See *Governance of Boards, Committees and Commissions, 1 O.C. 105.6*].

**D. Elected Entities.** Unless the bylaws state differently, an individual must be nominated at a caucus called by the Oneida Election Board or petition for ballot placement pursuant to the Oneida Election Law in order to be considered as a candidate for an elected entity. Candidates are to be notified by the Oneida Election Board within five business days from the date the OBC declares the official results of the election and all elected positions are official upon taking the oath at a OBC meeting [See *Governance of Boards, Committees and Commissions, 1 O.C. 105.7*].

**E. Bylaws.** This Law sets forth the minimum requirements for what must be included in entities' bylaws. In addition, the Law requires bylaws to follow a particular format. Every entity's bylaws must include



the following five articles; these articles include *[See Governance of Boards Committees and Commissions, 1 O.C. 105.8]*:

- *Article I. Authority-* includes the name, authority, office, membership, stipends, trainings & conference and conflict of interest subsections.
- *Article II. Officers-* requires a Chair and Vice Chair along with their duties, additional officers and duties, how they are chosen, budgetary and travel sign-off authority, and personnel subsections.
- *Article III. Meetings-* include regular, special and emergency meetings as well as quorum, order of business and voting subsections.
- *Article IV. Reporting-* includes agenda items, minutes and attachments, and reporting (both quarterly to OBC and annually and semi-annually to GTC) subsections.
- *Article V. Amendments-* includes language on how entities can amend their bylaws noting that OBC approval is required.

**F. Email.** This Law requires members to use the assigned Oneida email address when conducting business electronically for the entity. If the member is also an employee, the member will receive a separate email address from that of his/her work email. If the member serves on more than entity, he/she will have the same email address for all entities in which he/she serves *[See Governance of Boards, Committees and Commissions, 1 O.C. 105.9]*.

**G. Minutes.** Entities must submit all of their minutes to the Secretary within a reasonable time after approval by the entity. Actions are valid when the minutes are approved and the OBC is not required to take action on an entity's minutes unless their bylaws specify otherwise *[See Governance of Boards, Committees and Commissions, 1 O.C. 105.10]*.

**H. Dissolution of Entities.** Except a task force, ad hoc committee or subcommittee, all other entities can be dissolved by motion of the GTC or OBC, provided that an entity created by GTC can only be dissolved by a motion of GTC. If an entity is dissolved, the Chairperson and/or Secretary of the dissolved entity must close out the entity's open business and forward all files and documents to the Nation's Secretary within two weeks of the dissolution *[See Governance of Boards, Committees and Commissions, 1 O.C. 105.11]*.

**I. Stipends, Reimbursement & Compensation for Service.** Members will receive a maximum stipend of \$25.00 for each of the following: 1) holding an administrative rulemaking public meeting, 2) attending a hearing before the Judiciary that directly involves the entity, 3) attending a hearing before the Judiciary when the member is subpoenaed and 4) attending a OBC meeting or a meeting of an OBC standing committee to represent the entity when submitting a quarterly report and/or a request for attendance was made by the OBC or standing committee. Members will receive a maximum stipend of \$50.00 per four hours for conducting a hearing administered by the entity. Members can also earn stipends for attending entity meetings, conference and trainings as well as for activities not identified in this Law but are identified in the entity's bylaws *[See Governance of Boards, Committees and Commissions, 1 O.C. 105.12-2]*.

Members of appointed entities will receive a stipend of no more than \$50.00 per month when at least one meeting is conducted where a quorum is established and the meeting lasted at least one hour and the

member was present for at least one hour. The appointed entity can request stipends for additional meetings from the OBC [See *Governance of Boards, Committees and Commissions, 1 O.C. 105.12-3*].

Members of elected entities are paid a minimum stipend of \$50.00 for each meeting that has a quorum and lasts at least one hour and the member is attendance for at least an hour [See *Governance of Boards, Committees and Commissions, 1 O.C. 105.12-4*].

The OBC must periodically review the amounts provided for stipends and based on availability of funds, and must adjust those amounts by amending this Law [See *Governance of Boards, Committees and Commission, 1 O.C. 105.12-5*].

Members are eligible for a \$100.00 stipend for each full day the member is present at a conference or training when the attendance is required by law, bylaws or OBC or GTC resolution or the member receives advanced approval from the OBC to receive a stipend for attendance. Members cannot receive a stipend for time spent traveling but are eligible for reimbursement for normal business expenses related to membership in the entity. Members on a task force, ad hoc committee or subcommittee will not receive stipends unless a specific exception is made by the OBC or GTC [See *Governance of Board, Committees and Commissions, 1 O.C. 105.12-6 & 105.12-7*].

**J. Use of Nation's Assets.** Entities must maintain their bank accounts in the name of the Nation. The Nation must ensure the books are in accordance with the Generally Accepted Accounting Principles. Members are required to comply with system of internal accounting controls sufficient to provide assurances that 1) all transactions are executed in accordance with the procurement manual rules developed by the Purchasing Department, 2) access is permitted only in accordance with authorization identified in the procurement manual rules, and 3) all transactions are recorded to permit preparation of financial statements. Members must immediately report any evidence of noncompliance with any law or rule regarding the Nation's assets to internal audit staff. Internal audit must notify the Oneida Law Office of any evidence of noncompliance. The OBC and/or the Oneida Law Office will then decide if further action needs to be taken. Entities must manage all records in accordance with the Open Records and Open Meetings law. Members must surrender all official entity records kept by the member once the member is no longer serving on the entity [See *Governance of Boards, Committees, and Commission, 1 O.C. 105.13*].

**K. Conflicts of Interest & Other Ethical Requirements; Adherence to Oneida Laws.** Members must follow the ethical requirements set forth in the Code of Ethics and Conflict of Interest laws. In addition, members are subject to and must follow all applicable laws, policies, and rules of the Nation. Each entity must educate its members about the requirements identified in this Law, the Conflict of Interest law and the Code of Ethics as well as any other relevant and applicable laws, rules and procedures [See *Governance of Boards, Committees and Commissions, 1 O.C. 105.14*].

**L. Enforcement and Penalties.** Members that violate the laws and policies of the Nation can be subject to sanctions and other penalties, including termination of appointment or removal from office. If a member no longer meets the requirements to hold office, that member will be excluded from office; however exclusion is not a punishment. If a member's eligibility is questioned, the OBC will determine if the member meets the specific requirements and if it is determined that the member no longer meets the requirements, the OBC will declare the member excluded. The Secretary must notify the member that he/she has been declared excluded within two business days after the decision has been made. If the

member is elected, the Secretary must also notify the excluded member of his/her right to appeal. The excluded members position cannot be refilled until after the timeline for appeal has been exhausted or after the Trial Court issues a final ruling. The excluded member can appeal the OBC's decision to the Trial Court [See *Governance of Boards, Committees and Commissions, 1 O.C. 105.15-3 (c)*]. If a member has his/her appointment terminated or is removed from office, he/she cannot serve on any entity for one year, unless the bylaws of the entity identifies a longer time period. If a member is excluded from office, he/she can serve on another entity so long as the eligibility requirements are satisfied [See *Governance of Boards, Committees and Commission, 1 O. C. 105.15-4*]. If the entity fails to comply with this Law, the OBC can suspend payment of stipends until the entity becomes compliant with the Law. The OBC Treasurer will notify the Accounting Department when the stipends are to be stopped and when they are to resume. Stipends will accrue during the suspension and be paid out when stipends are reinstated unless the OBC directs otherwise. The OBC can adopt by resolution additional or alternative enforcement actions that may be imposed on entities for noncompliance [See *Governance of Boards, Committees and Commissions, 1 O.C. 105.15-5*].

## SECTION 6. EFFECT ON EXISTING LEGISLATION

**A. Oneida Travel and Expense Policy.** This Law states that the Nation shall reimburse members' travel and per diem costs in accordance with the Oneida Travel and Expense Policy [See *Governance of Boards, Committees and Commissions, 1 O.C. 105.12-6*]. The Policy can be interpreted a couple of ways which may conflict with this Law. The purpose of the Policy is to establish policies "governing the reimbursement of travel and expenses incurred during the conduct of business. It is company policy to reimburse employees for ordinary, necessary and reasonable travel expenses that are directly connected with, or pertaining to, the transaction of company business. Employees are expected to exercise prudent business judgment regarding cost effective expenses covered by this policy." In addition, a "traveler", according to the Policy, is an employee of the Nation in an employment capacity, who from time to time may be authorized to act on behalf of the Nation [See *Oneida Travel and Expense Policy, 2 O.C. 219.1-1 & 219.3-1 (d)*]. This can be read that the Policy only applies to employees but the proposed Law applies to anyone who serves on an entity, which may or may not include employees. If the intent is for the Oneida Travel and Expense Policy to apply only to employees then this Law would conflict with the Policy. However, section 219.4-2 of the Policy states that any travel for boards, committees, commissions must be authorized by sign off authority as indicated within approved bylaws. When reading this section, the Policy seems to conflict with itself in that both the purpose of the Policy and the definition for traveler clearly identify that the Policy pertains to an employee. However, section 219.4-2 includes boards, committees and commissions which is not compromised solely of employees. The LOC may want to consider revising the Policy to clarify whether or not the Policy applies to members of entities. The LOC may also want to consider further revisions to the Policy including changing references to the General Manager. The General Manager position was temporarily removed from the organizational structure pursuant to OBC Resolution 09-28-11-E and has yet to be filled.

## SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

**A.** If these amendments are adopted, entities may need to revise and re-submit their bylaws to comply with the Law.

- B. This Law requires the Secretary to generate, and the OBC to approve, the application required to be used by all applicants. The current application for appointment will need to be revised and will require OBC approval because it does not ask the applicant for their birth date, as required by this amendments [*See Governance of Boards, Committees, and Commissions, 1 O.C. 105.4-1 (a) (3)*]. In addition, there is a separate application form for the Oneida Election Board Alternate which may also need revising.

## SECTION 8. ENFORCEMENT

- A. Members that violate the laws of the Nation can be subject to sanctions or other penalties, removal, or have their appointment terminated pursuant to applicable law [*See Governance of Boards, Committees and Commissions, 1 O.C. 105.15-1*]. The Removal law sets forth the process for removing individuals elected to serve on boards, committees and commissions of the Nation [*See Removal Law, 1 O.C. 104.1-1*]. Those individuals that are appointed to boards, committees and commissions can have their appointment terminated in accordance with this Law. It should be noted that a Sanctions and Penalties law is not in affect at this time; however, a law is currently being developed.
- B. Entities can have their stipends suspended for not complying with this Law. In addition, the OBC can adopt a resolution that includes additional or alternative enforcement actions that can be imposed on entities for noncompliance [*See Governance of Boards, Committees and Commissions, 1 O.C. 105.15-5*].

## SECTION 9. OTHER CONSIDERATIONS

- A. **Original Intent:** Based on the agenda request form submitted by a former LOC member, the original request to amend this Law was to prohibit individuals from serving on multiple boards, committees and commissions at one time as well as to set term limits and prohibit employees from serving on boards, committees and commissions. The proposed Law still allows for individuals to serve on multiple entities, allows for employees to serve on entities and does not set term limits [*See Governance of Boards, Committees and Commissions, 1 O.C. 105.9-1 & 105.9-3*].
- B. **Creating an Entity:** This Law talks about how an entity is dissolved but does not address how an entity is created except in section 105.8-4 (a) (2) in which in the entity's bylaws must identify the name of the creation document and the citation for such creation document, if any.
- C. **Stipends:** In order to receive a stipend, the entity's meeting must have a quorum and must last at least an hour and the member must be present for at least an hour [*See Governance of Boards, Committees and Commissions, 1 O.C. 105.12-3 and 105.12-4*]. The LOC may want to consider amending when stipends are paid. An example may be to not include a timeline for how long a meeting must last but require the member to be present for the entire meeting to receive a stipend. This is similar to how General Tribal Council stipends are paid.
- D. **Review of Stipends:** In some situations, this Law sets the dollar amount on how much a stipend is worth. Section 105.12-5 the Law requires to the OBC to periodically review the amounts and based on availability of funds; adjust those amounts by amending the Law. Because the availability of

funding can change from time to time, the LOC may want to consider setting the stipends by Resolution instead of including them in the Law. This may reduce the need to amend the Law.

**E. Stipends and Travel:** The Law specifies that no stipend payment can be made for time spent traveling to and from the conference or training. The Law also says that member can receive a stipend for each full day he/she is present and a conference or training. There may be times when a training or conference is for a half day or partial day. The LOC may want to decide if a member will receive a stipend for partial days spent at a conference or training and include the appropriate language in the Law [*See Governance of Boards, Committees and Commissions, 1 O.C. 105.12-6 (c)*].

**F. Accounting:** This Law requires the entities to maintain all bank accounts for the Nation's funds in the name of the Nation. The entities must also manage all records in accordance with the Open Records and Open Meetings law [*See Governance of Boards, Committees and Commissions, 1 O.C. 105.13-1 and 105.13-4*]. Finance has suggested that the best way to maintain internal control is to keep control internally. The LOC may want to decide if the entity should maintain the bank accounts and manage records or have Central Accounting be responsible for these actions.

In addition, section 105.13-2 (b) says that each member must comply with system of internal accounting controls sufficient to provide assurances that access to assets is permitted only in accordance with management's authorization.

- The LOC may want to identify what the assets are (i.e. office supplies, cash, bank statements, accounting records, etc.).

**G. Multiple Entities:** This Law states that a member who has been terminated or removed is ineligible for appointment or election to any entity for one year from the effective date of terminated or removal [*See Governance of Boards, Committees, and Commissions, 1. O.C. 105.15-4*]. The Law is silent on what happens if the member is serving on multiple boards, committees and commissions and has his/her appointment terminated or is removed from one entity but not another entity. The LOC may want to decide if that member will be removed or have their appointment terminated from the other entity's they serve.

**H.** Please refer to the fiscal impact statement for any financial impacts.

PM Draft (Draft 20)  
2017 06 29

**Title 1. Government and Finances - Chapter 105**  
**Governance of Boards, Committees and Commissions**  
*Yolihwakwe'kú Kayanl'khsla? yethiya'tanú' nha tsi? ka'yá lonatlihu'tú'*

*all of the matters – laws and policies – they're watching over them – the ones that have been appointed*

105.1. Purpose and Policy	105.10. Minutes
105.2. Adoption, Amendment, Repeal	105.11. Dissolution of Entities
105.3. Definitions	105.12. Stipends, Reimbursement and Compensation for Service
105.4. Applications	105.13. Use of the Nation's Assets.
105.5. Vacancies	105.14. Conflicts of Interest and Other Ethical Requirements,
105.6. Appointed Entities	Adherence to Oneida Laws
105.7. Elected Entities	105.15. Enforcement and Penalties
105.8. Bylaws	
105.9. Official Oneida E-mail Address Required for all Entity Members	

### **105.1. Purpose and Policy**

105.1-1. It is the purpose of this law to govern the standard procedures regarding the appointment and election of persons to boards, committees and commissions of the Oneida Nation; the creation of bylaws, maintenance of official records, compensation, and other items related to boards, committees and commissions. This law does not apply to the Nation's corporations due to the corporate structure and autonomy of those entities.

105.1-2. It is the policy of the Nation to have consistent and standard procedures for choosing and appointing the most qualified persons to boards, committees and commissions, for creation of bylaws governing boards committees and commissions, and for the maintenance of information created by and for boards, committees and commissions.

### **105.2. Adoption, Amendment, Repeal**

105.2-1. This law was adopted by the Oneida Business Committee by resolution BC-8-2-95-A and amended by resolutions BC-5-14-97-F, BC-09-27-06-E, BC-09-22-10-C and BC-

105.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

105.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

105.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, the requirements of the Oneida Nation Gaming Ordinance supersede the provisions of this law in regards to the Oneida Gaming Commission.

105.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

### **105.3. Definitions**

105.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Application" means the form by which a person seeks to be appointed to fill a vacancy or considered as a candidate for an election to serve on an entity.
- (b) "Appointment" means a person who is selected and approved by the Oneida Business Committee to serve on an entity.
- (c) "Business day" means Monday through Friday from 8:00 a.m. - 4:30 p.m., excluding holidays recognized by the Nation.
- (d) "Chairperson" means the current elected chairperson of the Nation or his or her designee.
- (e) "Conference" means any seminar, meeting, or other assembly of persons which is not an assembly of the entity.
- (f) "Confidential information" means all information or data, whether printed, written, electronic or oral, concerning business or customers of the Nation, disclosed to, acquired by, or generated by members in confidence at any time during their elected or appointed term or during their employment; and includes, but is not limited to, the resources of the Nation, its enterprises, programs, business interests, financial information, trade secrets and any other information that could be used against the Nation or those duly authorized to represent its interests.
- (g) "Conflict of interest" means:
- (1) any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which a member, or their immediate family, friends or associates, or any other person with whom they have contact, have that conflicts with any right of the Oneida Nation to property, information, or any other right to own and operate activities free from undisclosed competition or other violation of such rights of the Oneida Nation,
  - (2) any financial or familial interest that a member or their immediate family may have in any transaction between the Oneida Nation and an outside party, and
  - (3) any other situation that has the potential to corrupt an member's motivation or decision making, because of an actual, or apparent divergence between the member's self-interests, and the best interests of the entity or Nation. Conflicts of interest may include, but are not limited to, personal bias, financial interests of the member's or the member's immediate family; or responsibilities to other entities or areas of the Nation.
- (h) "Descendant" means a person who is registered with the Oneida Enrollment Department as a lineal descendant of enrolled members of the Nation.
- (i) "Entity" means a board, committee or commission of the Nation created by the General Tribal Council or the Oneida Business Committee with members appointed by the Oneida Business Committee or elected by the Nation's membership.
- (j) "Immediate family" means the husband, wife, mother, father, step mother, step father, son, daughter, step son, step daughter, brother, sister, step brother, step sister grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law, sister-in-law.
- (k) "Interim position" means a position on an entity that is created by a vacancy and that may be filled only for the remainder of a term.
- (l) "Member" means any person appointed or elected to serve as a member of an entity.
- (m) "Nation" means the Oneida Nation.
- (n) "Official media outlets" means all media outlets identified in BC Resolution 03-22-17-B which include the Nation's website and the Kalihwisaks.
- (o) "Rule" means a set of requirements enacted in accordance with the Administrative



Rulemaking law in order to implement, interpret and/or enforce a law of the Nation.

(p) "Secretary" means the current elected secretary of the Nation or his or her designee.

(q) "Stipend" means that amount paid by the Nation to members as compensation for services provided. Stipends are paid in the form of cash or cash equivalent, which may include, but is not limited to, gift cards.

(r) "Subcommittee" means a subgroup of an entity; which is comprised of fewer than all members of the entity; which is designated one (1) or more specific responsibilities on behalf of the entity.

(s) "Task force or ad hoc committee" means a group of persons gathered to pursue a single goal, the accomplishment of which means the disbanding of the group. The goal is generally accomplished in a short time period, i.e. less than one (1) year, but the goal itself may be long-term.

(t) "Transaction" means any activity wherein a provider of goods and/or services is compensated in any form.

(u) "Vacancy" means any position on an entity that is available and not filled by a member.

#### **105.4. Applications**

105.4-1. The Secretary shall generate, and the Oneida Business Committee shall approve, the application required to be used by all applicants.

(a) The application shall contain questions needed to obtain information necessary to make an informed decision as to the qualifications of any individual to fill a vacancy; including, at a minimum, questions to obtain the applicant's:

(1) name;

(2) address;

(3) date of birth;

(4) phone number;

(5) position applied for.

(b) Along with the application, applicants may also be required to submit additional information demonstrating that the applicant meets any additional qualifications established in a specific entity's bylaws, including but not limited to:

(1) proof of tribal enrollment or documentation from the Enrollments Department verifying that the applicant is an Oneida descendant, and/or

(2) a release enabling the Secretary to obtain relevant education records, if the entity has established education requirements; and/or

(3) proof of address, if a residency requirement is established in the entity's bylaws.

105.4-2. Applications shall be filed with the Secretary by 4:30 p.m. of the deadline date. The Secretary shall accept applications arriving by mail so long as the envelope is postmarked by the deadline date and received by the Secretary within five (5) business days of the deadline.

105.4-3. The Election Board shall verify all applications for elected positions in accordance with the Oneida Election Law to ensure the eligibility and qualification requirements are met as identified in this law and the entity's bylaws. The Secretary shall verify all applications for appointed positions to ensure the eligibility and qualification requirements are met as identified in this law and the entity's bylaws.

105.4-4. Within fifteen (15) business days from the date of the application deadline, the Election Board shall provide notice to all applicants for an elected position and the Secretary shall provide notice to all applicants for an appointed position. The Election Board and Secretary may go

outside this time limit for good cause. Notice shall be formatted the same for all applicants and, at a minimum, shall include the following:

- (1) the date the applicant's application was filed;
- (2) whether the applicant meets the eligibility requirements and will be considered for the election/appointment;
- (3) a note that further information may be requested by contacting the party sending the notice and providing such contact information;
- (4) the applicable duties for the position sought by the applicant; and
- (5) if the applicant is eligible for election/appointment, the notice shall include the following provision:

"The Oneida Nation reports all income paid by the Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive the applicable tax form(s), which is also forwarded to the Internal Revenue Service; it is also your responsibility to keep documentation of expenses related to this income."

105.4-5. In the event that there are insufficient applicants after the deadline date has passed for appointed positions, the Secretary shall request permission from the Oneida Business Committee to repost the vacancy for an additional timeframe equal to the initial posting, provided that in considering the Secretary's request, the Oneida Business Committee has no discretion to waive any applicable deadlines or eligibility/qualification requirements. In the event of a reposting, the Secretary shall consider prior applicants to have filed applications within the deadline period.

### **105.5. Vacancies**

105.5-1. This section governs when vacancies occur, and where and when to post notice of vacancies. Notwithstanding the initial determination of membership to an entity, the member's status as appointed or elected is based entirely on the entity's classification as an appointed or elected entity pursuant to the entity's bylaws.

105.5-2. Entities shall notify the Secretary as soon as the entity learns that any position has or will become vacant, so that the Secretary may post notice of vacancy to fill the vacancy.

105.5-3. The Secretary shall request and receive permission from the Oneida Business Committee prior to posting notice of vacancies on any entity.

(a) *Vacancies due to term expiration.* On an annual basis, the Secretary may request permission from the Oneida Business Committee to post notice of vacancies for all positions that are expected to become vacant due to regular term expirations. Once the Oneida Business Committee has granted permission, the Secretary shall post notice for each individual term completion thirty (30) days in advance of each term completion.

(b) *Vacancies that occur for any other reason.* For any vacancy that occurs for any reason other than the end of a term, the Secretary shall request permission to post notice of the vacancy at the first available Oneida Business Committee meeting after the seat becomes vacant; and shall post the notice within a reasonable time after receiving permission from the Oneida Business Committee.

105.5-4. After receiving permission from the Oneida Business Committee, the Secretary shall post notice of vacancies on the Nation's official media outlets and any reasonable location requested by the entity.

105.5-5. In the event that there is an administrative/clerical error in the Secretary's posted notice of vacancy; the Secretary may correct such error by reposting the notice of vacancy as soon as practicable after noticing such error. If a notice of vacancy is reposted, the notice timeline shall

begin at the repost date. Under these limited circumstances, the Secretary may re-post notice without first obtaining permission from the Oneida Business Committee, provided that the Secretary shall provide notice of the reposting to the Oneida Business Committee at the first available Oneida Business Committee meeting after learning of the error requiring the reposting. In the event of reposting, prior applicants shall be considered to have filed applications within the deadline period.

#### **105.6. Appointed Entities**

105.6-1. The Oneida Business Committee shall make all appointments at regular or special Oneida Business Committee meetings; provided that, no applicant may be appointed who fails to meet the requirements set out in the entity's bylaws.

105.6-2. The Oneida Business Committee shall use the following procedures to determine which applicant is appointed:

(a) Within five (5) business days after notice has been provided to applicants pursuant to section 105.4-4, the Secretary shall deliver to the Chairperson all applications from eligible candidates, along with a summary of each candidate's qualifications to hold office.

(b) When selecting an applicant(s) for appointment, the Chairperson may consider the entity's recommendations, if such recommendations are provided. Within thirty (30) days after receiving the applications from the Secretary, the Chairperson shall select an applicant(s) for appointment. Provided that, the Chairperson may designate another member of the Oneida Business Committee to select a candidate for appointment in situations where the Chairperson has determined there may be a conflict of interest.

(c) Once the Chairperson has made a selection, he or she shall forward the list of qualified applicants along with his or her selected applicant(s) to all Oneida Business Committee members. Based on the information provided, the Oneida Business Committee shall, by a majority vote of a quorum at any Oneida Business Committee meeting, either accept or reject the Chairperson's selected applicant(s).

(d) If the Chairperson's applicant(s) is rejected by the Oneida Business Committee, the Oneida Business Committee shall:

(1) Direct the Chairperson to make another recommendation. If the Chairperson is unable to immediately select another applicant, then the Chairperson may request to defer the decision to the next OBC meeting.

(2) If the Chairperson is unable to, or declines to, select another applicant; or if the Oneida Business Committee does not approve the second applicant by majority vote, then the Oneida Business Committee shall select and approve another applicant from the list of qualified applicants. This action may be taken immediately, or the Oneida Business Committee may defer the selection to the following Oneida Business Committee meeting.

(3) If the Oneida Business Committee is unable to select and approve another applicant from the list of qualified applicants, the Oneida Business Committee shall direct the vacancy to be re-posted. When a vacancy is re-posted under this section, all applications from the first posting shall be considered to have been filed within the deadline period.

105.6-3. The Chairperson shall forward a list of all applicants to the Secretary and the final decision regarding the selection after the procedures in section 105.6-2 are completed. The Secretary shall then notify all applicants of the final status of their application. Notice to those selected for appointment shall identify when the appointee is required to appear for taking the

oath, and shall include the following:

“The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive the applicable tax form(s), which is also forwarded to the Internal Revenue Service; it is also your responsibility to keep documentation of expenses related to this income.”

105.6-4. All appointments are official upon taking an oath at a regular or special Oneida Business Committee meeting and all rights and delegated authorities of membership in the entity vest upon taking the oath.

(a) The Secretary shall maintain originals of the signed oath.

(b) The Secretary shall forward copies of the oath to the new member and the entity.

(c) The Oneida Business Committee shall approve the wording of oaths and the Secretary shall keep such oaths on file. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee:

“I, (name), do hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Nation’s Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and with the strictest confidentiality. I will carry out the duties and responsibilities as a member of the (entity name), and shall make all recommendations in the best interest of the Oneida Nation as a whole.”

(d) All oaths shall be sufficient to make the appointee aware of his or her duty to the Nation as a member of the entity.

105.6-5. *Termination of Appointment.* Appointed entities serve at the discretion of the Oneida Business Committee. Upon the recommendation of an Oneida Business Committee member, a member of an appointed entity may have his or her appointment terminated by the Oneida Business Committee by a two-thirds (2/3) vote of the entire Oneida Business Committee.

(a) An appointed entity may bring a request for termination of a member to the Oneida Business Committee. When requesting termination of a member’s appointment, the entity shall provide documentation or other justification for the request, and shall identify the reason(s) the entity is seeking termination of the member’s appointment.

(b) The Oneida Business Committee’s decision to terminate an appointment is final and not subject to appeal.

## **105.7. Elected Entities**

105.7-1. Except where an entity’s bylaws allow vacancies to be filled by appointment, in order to serve on an elected entity, a person shall either be nominated at a caucus called by the Oneida Election Board, or petition for ballot placement in accordance with the Oneida Election Law.

105.7-2. The Oneida Election Law governs all other processes. In addition to these processes, the Oneida Election Board shall notify all applicants of the final results of the election within five (5) business days from the date the Oneida Business Committee declares the official results of the election. Notice to those elected shall identify when the elected person is required to appear for taking the oath, and shall include the following:

“The Oneida Nation reports all income paid by the Oneida Nation in whatever form. The Internal Revenue Service of the United States considers stipends paid to members of boards, committees, and commissions to be income which may be offset by expenses related to that income. You will receive the applicable tax form(s), which is also forwarded to the Internal Revenue Service; it is also your responsibility to keep documentation of expenses related to this income.”

105.7-3. All elected positions are official upon taking an oath at a regular or special Oneida Business Committee meeting and all rights and delegated authorities of membership in the entity vest upon taking the oath.

(a) The Secretary shall maintain originals of the signed oath.

(b) The Secretary shall forward copies of the oath to the new member and the entity.

(c) The Oneida Business Committee shall approve the wording of oaths and the Secretary shall keep such oaths on file. The following oath is the standard oath to be used unless a specific oath for the entity is pre-approved by the Oneida Business Committee:

“I, (name), do hereby promise to uphold the laws and regulations of the Oneida Nation, the General Tribal Council, and the Nation’s Constitution. I will perform my duties to the best of my ability and on behalf of the Oneida people with honor, respect, dignity, and sincerity and with the strictest confidentiality. I will carry out the duties and responsibilities as a member of the (entity name), and shall make all recommendations in the best interest of the Oneida Nation as a whole.”

(d) All oaths shall be sufficient to make the elected person aware of his or her duty to the Nation as a member of the entity.

#### **105.8. Bylaws**

105.8-1. Bylaws for each entity shall conform to this outline and contain this minimum information, although more information is not prohibited.

105.8-2. Specifically excepted from this section are task forces, ad hoc committees and subcommittees. However, these entities shall, at a minimum, have mission or goal statements for completion of the task.

105.8-3. Each entity’s bylaws shall contain the following articles:

(a) Article I. Authority

(b) Article II. Officers

(c) Article III. Meetings

(d) Article IV. Reporting

(e) Article V. Amendments

105.8-4. *Sub-articles.* Articles shall be divided into sub-articles as identified herein:

(a) “Article I. Authority” shall consist of the following:

(1) *Name.* The full name of the entity and any short name that will be officially used.

(2) *Authority.* The name of the creation document and the citation for such creation document, if any.

(3) *Office.* The official office or post box of the entity.

(4) *Membership.*

(A) Number of members;

(B) Whether the entity is an elected or appointed body and how members are elected or appointed;

(C) How vacancies are filled

(D) The requisite qualifications for membership. At a minimum,

members shall be an enrolled member of the Oneida Nation or another federally-recognized Indian tribe; or an Oneida descendant.

(i) Entities may, in their bylaws, establish more stringent requirements for qualifications; including but not limited to:

(a) Blood quantum or generational requirements for descendants (i.e. first-generation, second-generation, etc.);

(b) Any minimum education requirements; which may include, but are not limited to; a high school diploma or equivalent; an associate's degree or equivalent, or a bachelor's degree; and/or

(c) Any other requirements that may enable the entity to best perform the responsibilities delegated to the entity by Oneida law.

(ii) If an entity amends its bylaws to establish more stringent requirements for qualifications, then any existing members who do not meet the more stringent qualifications shall be exempt from those requirements until their present term expires. Provided that, such members shall not be eligible for re-election or re-appointment to the entity unless they can meet the more stringent requirements.

(E) Causes for termination or removal, if any, in addition to those identified herein and in the Removal law.

(F) That members may resign from an entity by doing either of the following, and that such resignation shall be effective upon either of the following occurring:

(i) Deliverance of a resignation letter to the entity; or

(ii) The entity's acceptance by motion of a verbal resignation.

(5) *Stipends*. A comprehensive list of all stipends members are eligible to receive and the requirements for collecting each stipend, if any in addition to those contained in this law.

(a) Stipends may only be provided for emergency meetings if the bylaws expressly authorize members to receive stipends for emergency meetings.

(6) *Trainings and Conferences*. A comprehensive list of all trainings and conferences that the entity deems necessary for members to responsibly serve the entity. In accordance with section 105.12-6, members shall only be eligible for stipends, per diem, and/or reimbursement of expenses for attending a training or conference if the training or conference is required by the entity's bylaws, Oneida law, Oneida Business Committee or General Tribal Council resolution; or if the member's attendance is pre-approved by the Oneida Business Committee.

(7) *Conflicts of Interest*. Any additional or particular requirements related to when a member should recuse himself or herself due to a conflict of interest.

(b) "Article II. Officers" shall consist of the following:

(1) *Chair and Vice-Chair*. This section creates the positions of the entity. Other positions may also be created here.

(2) *Chair Duties*. Because of the importance of this position, the duties and limitations of the entity's chairperson shall be specifically listed.

(3) *Vice-Chair Duties*. Because of the importance of this position, the duties and limitations of the entity's vice chairperson shall be specifically listed.

- 387 (4) *Additional Officers and Duties.* Additional sub-articles shall specifically list  
388 duties and limitations for every officer position identified in subsection (1).  
389 (5) *How Chosen.* Bylaws shall specifically state how a member of the entity will  
390 be chosen to occupy an officer's position.  
391 (6) *Budgetary and Travel Sign-Off Authority.* The Purchasing Department shall  
392 confirm each position within the entity that has been designated as having sign-off  
393 authority. Bylaws shall identify:  
394 (A) The entity's varying levels of budgetary sign-off authority, including  
395 which members are authorized to sign-off at each level, and  
396 (B) Which members have the authority to sign off on travel on behalf of  
397 the entity.  
398 (7) *Personnel.* The entity's authority for hiring personnel, if any, and the duties of  
399 such personnel.  
400 (c) "Article III. Meetings" shall consist of the following; provided that, all meetings shall  
401 be noticed and called in accordance with the Open Records and Open Meetings law:  
402 (1) *Regular Meetings.* When and where the entity shall hold regular meetings, and  
403 how the entity shall provide notice of the meeting, agenda, documents, and  
404 minutes.  
405 (2) *Special Meetings.* How the entity may call special meetings and how the  
406 entity shall provide notice of special meetings. Special meetings are not scheduled  
407 regular meetings, but also do not rise to the level of emergency justification  
408 required for emergency meetings.  
409 (3) *Emergency Meetings.* Emergency meetings are meetings that need to be called  
410 sooner than a meeting could be called if the twenty-four (24) hour notice  
411 requirement, as set out in the Open Records and Open Meetings law, is followed.  
412 Emergency meetings may only be held when necessary to maintain order and/or  
413 protect public health and safety. Bylaws shall:  
414 (A) State how the entity may call emergency meetings and how the entity  
415 shall notice emergency meetings, and  
416 (B) Include the following provision:  
417 "Within seventy-two (72) hours after an emergency meeting, [the entity]  
418 shall provide the Secretary with notice of the meeting, the reason for the  
419 emergency meeting, and an explanation of why the matter could not wait  
420 for a regular or special meeting."  
421 (4) *Quorum.* How many members create a quorum. At a minimum, a majority of  
422 the entity's current members shall be required to create a quorum.  
423 (5) *Order of Business.* How the agenda will be set.  
424 (6) *Voting.* Voting requirements, including the requisite percentages for passing  
425 different items and when, if at all, the entity's chairperson may vote.  
426 (d) "Article IV. Reporting" shall consist of the following:  
427 (1) *Agenda Items.* Agenda items shall be maintained in an identified and  
428 consistent format.  
429 (2) *Minutes and Attachments.* Minutes shall be typed in a consistent format  
430 designed to generate the most informative record of the meetings of the entity.  
431 Handouts, reports, memoranda, and the like may be attached to the minutes and  
432 agenda, or may be kept separately, provided that all materials can be identified  
433 based on the meeting in which they were presented. Meeting materials and  
434 records shall be maintained in accordance with the Open Records and Open



Meetings law.

(3) *Reporting.* Entities shall report to the Oneida Business Committee member who is their designated liaison intermittently as the entity and the liaison agree to, but not less than as required in any law, rule, or other reporting requirement developed by the Oneida Business Committee or Oneida General Tribal Council. Entities shall also make quarterly reports to the Oneida Business Committee; and annual and semi-annual reports to the Oneida General Tribal Council. All reports shall be approved by official entity action before they are submitted.

(A) *Quarterly Reporting to the Oneida Business Committee.* The Secretary shall create a reporting schedule, which shall be approved by the Oneida Business Committee and posted on the Nation's website. Whenever an entity's quarterly report is placed on the agenda for an upcoming Oneida Business Committee meeting, the entity shall ensure that at least one (1) member attends the Oneida Business Committee meeting.

(B) At a minimum, quarterly reports shall include the following information:

(i) *Names:* The names of the entity, the member submitting the report, the Oneida Business Committee liaison; and a list of the members and their titles, term expiration dates and contact information.

(ii) *Minutes:* Any required updates to meeting minutes previously submitted and approved by the Oneida Business Committee including any actions taken that were not included in meeting minutes that were previously approved.

(iii) *Financial Reports:* Financial reports are only required to be included if specifically requested by the Oneida Business Committee or if required by the entity's bylaws.

(iv) *Special Events and Travel:* Any special events held during the reporting period and any travel by the members and/or staff that occurred during the reporting period or is anticipated in the upcoming reporting period; including:

(a) Which member(s) and/or staff traveled or will travel; including travel dates and destinations.

(b) The purpose for the travel and a brief explanation of how the travel benefited the Nation;

(c) The cost of the travel and how the cost was covered or will be covered by the entity; and

(d) Whether the cost of travel was/is within the entity's budget and, if not, an explanation as to why travel costs in excess of the entity's budget were incurred or are anticipated.

(vi) *Goals and Accomplishments:* The entity's annual goals, as established in the entity's most recent annual GTC report; including how the entity has worked towards achieving such goals during the reporting period.

(vii) *Meetings:* When and how often the entity is meeting and whether any emergency and/or special meetings have been held.

(a) If emergency meetings were held, the report shall indicate the basis of the emergency for each meeting.

(b) If special meetings were held, the report shall indicate the topic of each meeting.

(viii) *Follow-up*: Actions taken in response to Oneida Business Committee and/or General Tribal Council directives, if any.

(C) *Annual and Semi-Annual Reporting – General Tribal Council*. Entities shall make annual reports to the Oneida General Tribal Council based on their activities during the previous fiscal year, and semi-annual reports based on their activities during the current fiscal year. All annual and semi-annual reports shall follow a format prescribed by the Secretary. At a minimum, entities shall include the following information in annual reports, and shall update this information in the semi-annual reports.

(i) *Entity Reports*.

(a) *Names*: The name and purpose of the entity, a list of the members and their titles, the contact person for the entity and their contact information; including phone number, mailing address, email address, and the entity's website.

(b) *Meetings*: When meetings are held, where they are held, at what time they are held and whether they are open or closed.

(c) *Stipends*: The amount of each stipend a member may be eligible to receive.

(d) *Goals and Accomplishments*: Up to three (3) accomplishments the entity achieved in the previous fiscal year and how each accomplishment impacted the Oneida community; and three (3) strategic goals the entity will pursue in the new fiscal year.

(e) *Complaints and Dispositions*. A list of any complaints filed against individual members or against the entity; including the actions, if any, taken in response to each complaint.

(f) *Logo and Images*: The entity's logo and any other pictures or images that the entity would like to be considered by the Secretary for inclusion in the report.

(g) *Budget*. Annual reports shall also identify the entity's original budget for the previous fiscal year, what the actual budget expensed was at the close of the fiscal year, and, if not within the entity's original budget, an explanation for why the budget was exceeded.

(ii) *Department Reports*. Each entity with oversight of a department shall also submit annual and semi-annual reports for each department the entity oversees. These reports shall include the following information:

(a) *Names*: The name and purpose of the department, the department's website, and the contact person for the department and their phone number, mailing address, and

e-mail address.

(b) *Employees*: How many employees the department has and how many of those employees are enrolled members of the Nation.

(c) *Service Base*: A brief description of who the department serves.

(d) *Goals and Accomplishments*: Up to three (3) accomplishments the department achieved in the previous fiscal year and how each accomplishment impacted the Oneida community; as well as three (3) strategic goals the department will pursue in the new fiscal year.

(e) *Logo and Images*: The department's logo that may be included in the report and any other pictures or images that the department would like to be considered by the Secretary for inclusion in the report.

(f) *Budget*. Annual reports shall also identify the department's:

(1) funding sources; including the Nation's contribution, grants, and other sources;

(2) total budget for the previous fiscal year; and

(3) the actual budget expensed at the close of the fiscal year, and, if not within the department's original budget, an explanation for why the budget was exceeded.

(e) "Article V. Amendments" shall identify how amendments to the bylaws may be initiated by the entity. Provided that, amendments shall conform to the requirements of this law and any other law or applicable rule; and shall be approved by the Oneida Business Committee prior to implementation.

#### **105.9. Official Oneida E-mail Address Required for all Entity Members**

105.9-1. The Secretary shall work with the Management Information Systems department to provide each entity member with an official Oneida e-mail address upon election or appointment. If a member is also an employee of the Nation, he or she shall receive a separate e-mail address from his or her regular work e-mail address. Members shall sign an acknowledgment form provided by the Secretary indicating notice of the Nation's applicable computer and media related laws, policies and rules. The Secretary shall maintain a record of all such acknowledgment forms.

105.9-2. Members shall use their official Oneida e-mail address when conducting business of the entity electronically. Members may not use any personal or work e-mail address to electronically conduct any business of the entity.

105.9-3. Immediately upon receipt of notice of an entity vacancy, the Secretary shall instruct the Management Information Systems department to disable the e-mail address for the member having vacated the position; unless the member continues to serve on another entity and uses the same e-mail address for the other entity.

#### **105.10. Minutes**

105.10-1. Entities shall submit all minutes to the Secretary within a reasonable time after approval by the entity.

105.10-2. Actions taken by an entity are valid when minutes are approved and filed in accordance with this section and the entity's approved bylaws.

105.10-3. No action or approval of minutes is required by the Oneida Business Committee on minutes submitted by an entity unless specifically required by the bylaws of that entity.

#### **105.11. Dissolution of Entities**

105.11-1. Entities may be dissolved according to this section; however, additional specific directions may be included in an entity's bylaws.

105.11-2. A task force, ad hoc committee or subcommittee dissolves upon a set date or acceptance of a final report. Unless otherwise indicated, within two (2) weeks of dissolution, the task force, ad hoc committee or subcommittee shall forward all of its records to the Secretary for proper record management in accordance with the Open Records and Open Meetings law.

105.11-3. All other entities may only be dissolved by motion of the Oneida General Tribal Council or the Oneida Business Committee, provided that an entity created by the General Tribal Council may only be dissolved by a motion of the Oneida General Tribal Council.

105.11-4. All chairpersons and/or secretaries of dissolved entities shall close out open business of the entities and forward, within two (2) weeks of the dissolution of an entity, all files and documents to the Secretary for proper storage and disposal in accordance with the Open Records and Open Meetings law.

#### **105.12. Stipends, Reimbursement and Compensation for Service**

105.12-1. The Nation shall compensate members and reimburse members for expenses as set out in this section and according to the Nation's procedures for payment.

105.12-2. The Nation recognizes that persons serving on entities incur some expense. Therefore, in order to attract persons to serve on entities, the Nation shall pay stipends to entity members in accordance with this section, unless otherwise declined by a member(s).

(a) Members may receive a maximum of a twenty-five dollar (\$25) stipend for each of the following:

(1) One (1) member's administration of a rulemaking public meeting pursuant to the Administrative Rulemaking law;

(2) One (1) member's attendance at a hearing before the Oneida Judiciary directly involving the entity, where attendance is at the entity's discretion;

(3) Each member's attendance at a hearing before the Oneida Judiciary where member's attendance is required by official subpoena; and

(4) One (1) member's attendance at an Oneida Business Committee meeting, or at a meeting of a standing committee of the Oneida Business Committee, for the purpose of representing the entity's business before that body, in the following situations:

(A) For the submission of quarterly reports,

(B) As requested by the Oneida Business Committee, and/or a standing committee of the Oneida Business Committee.

(b) Members conducting hearings administered by the entity may earn a maximum of a fifty dollar (\$50) stipend per four (4) hour session of the hearing. For the purposes of this section, a hearing consists of all functions related to the resolution of the matter, including, but not limited to, any continuations and decision drafting.

(c) Members may earn stipends for attending entity meetings, conferences and trainings as provided in sections 105.12-3 through 105.12-7.

(d) Members may earn additional stipends for activities not identified herein, provided

that such stipends are identified in the entity's bylaws, as approved by the Oneida Business Committee.

105.12-3. *Meeting Stipends for Members of Appointed Entities.* Except as provided in subsection (a), the Nation shall pay members serving on appointed entities a stipend of no more than fifty dollars (\$50) per month when at least one (1) meeting is conducted where a quorum has been established in accordance with the duly adopted bylaws of that entity. Such meeting shall last for at least one (1) hour and members collecting stipends shall be present for at least one (1) hour of the meeting.

(a) Should an entity require more than one (1) meeting per month and seek stipends for those additional meetings, the entity may request an exception from the Oneida Business Committee at a regularly scheduled Oneida Business Committee meeting, provided that the entity shall have the exception approved in advance of the additional meeting(s).

105.12-4. *Meeting Stipends for Members of Elected Entities.* The Nation shall pay members serving on elected entities a minimum stipend of fifty dollars (\$50) for each meeting which has established a quorum in accordance with the duly adopted bylaws of that entity for at least one (1) hour, regardless of the length of the meeting. Members collecting stipends shall be present for at least one (1) hour of the meeting, regardless of the length of the meeting.

105.12-5. The Oneida Business Committee shall periodically review the amounts provided for stipends and, based on the availability of funds, shall adjust those amounts accordingly by amending this law.

105.12-6. *Conferences or Trainings.* The Nation shall reimburse members' travel and per diem costs in accordance with the Oneida Travel and Expense Policy to offset members' costs for attending a conference or training, and shall provide a stipend provided that:

(a) A member is eligible for a one hundred dollar (\$100) stipend for each full day the member is present at the conference or training, when:

(1) attendance at the conference or training is required by law, bylaws or Oneida Business Committee or General Tribal Council resolution, or

(2) the member receives approval in advance from the Oneida Business Committee to receive a stipend for attendance.

(b) No stipend payments may be made for time spent traveling to and from the conference or training.

105.12-7. All members of entities are eligible for reimbursement for normal business expenses naturally related to membership in the entity.

105.12-8. Task force, ad hoc committee and subcommittee members are not eligible for stipends unless a specific exception is made by the Oneida Business Committee or the Oneida General Tribal Council.

### **105.13. Use of the Nation's Assets**

105.13-1. Entities shall maintain all bank accounts for the Nation's funds in the name of the Nation. The Nation shall reflect such accounts on its books in accordance with the Generally Accepted Accounting Principles.

105.13-2. Each member shall comply with the system of internal accounting controls sufficient to provide assurances that:

(a) all transactions are executed in accordance with procurement manual rules developed by the Purchasing Department as required in the laws and rules governing budget management and control; and

(b) access to assets is permitted only in accordance with authorization identified in the procurement manual rules; and

(c) all transactions are recorded to permit preparation of financial statements in conformity with the Generally Accepted Accounting Principles or other applicable criteria.

105.13-3. Members shall immediately report to the internal audit staff any evidence of noncompliance with any law or rule regarding the use of the Nation's assets. If the internal audit staff finds evidence of noncompliance, they shall notify the Oneida Law Office. The Oneida Business Committee and/or the Oneida Law Office shall then make a determination of further action to be taken, if any.

105.13-4. Entities shall manage all records in accordance with the Open Records and Open Meetings law.

(a) When a member is no longer serving on the entity, any official entity records possessed by the member shall be provided back to the entity.

#### **105.14. Conflicts of Interest and Other Ethical Requirements; Adherence to Oneida Laws**

105.14-1. Members are at all times subject to the ethical requirements identified in the Code of Ethics and the Conflict of Interest law.

105.14-2. Members are subject to, and shall follow, all applicable laws, policies and rules of the Nation.

105.14-3. Each entity shall educate its members about the requirements of this law, the Conflict of Interest law and the Code of Ethics; as well as any other relevant and applicable laws, rules and procedures.

#### **105.15. Enforcement and Penalties**

105.15-1. Members who violate the laws and policies of the Nation may be subject to sanctions or other penalties, including termination of appointment and removal from office, pursuant to applicable law.

105.15-2. Candidates for office, and members, shall be subject to sanctions and penalties for violations of this law, in accordance with the following:

(a) Candidates for appointment or election found to be in violation of this law may be disqualified from taking office.

(1) The Election Board is responsible for determining whether a candidate for an elected position has violated this law in such a manner that disqualification from office is warranted. However, prior to making such a determination, the Election Board shall provide the candidate with reasonable notice and an opportunity to respond to the claim(s).

(2) The Oneida Business Committee is responsible for determining whether a candidate for appointment has violated this law such that disqualification from office is warranted.

(b) Members found to be in violation of this law may be subject to sanctions and penalties in accordance with laws of the Nation governing sanctions and penalties for officials.

(1) Elected members may also be removed from office pursuant to the Nation's laws governing removal of elected officials.

(2) The Oneida Business Committee may terminate the appointment of any appointed member at any time, in accordance with 105.6-5.

105.15-3. *Exclusion.* Except as provided in 105.8-4(a)(4)(D)(ii), if a member no longer meets the eligibility requirements for office, as identified in the entity's bylaws, Oneida laws, and/or the Oneida Constitution; then the member shall be excluded from office, and his or her position

shall be declared vacant. Exclusion is not a form of punishment.

(a) When a member's eligibility is questioned, the Oneida Business Committee shall determine if the member meets the specific eligibility requirements. The Oneida Business Committee shall declare the member excluded when appropriate.

(b) Within two (2) business days after the Oneida Business Committee declares a member excluded, the Secretary shall notify the excluded member of the Oneida Business Committee's decision. If the seat is an elected position; the Secretary shall also notify the excluded member of his or her right to appeal the exclusion to the Judiciary in accordance with (c).

(1) *Appointed Officials.* After notifying an appointed official of his or her exclusion, the Secretary shall promptly ensure that any administrative duties related to the vacancy are completed; including but not limited to, removing the former member's name from the list of current members, disabling the former member's e-mail address, and re-posting the vacancy.

(2) *Elected Officials.* After notifying an elected official of his or her exclusion, the Secretary shall ensure that any administrative duties related to the vacancy are completed; provided that, no administrative actions shall be performed until one (1) of the following occurs:

(A) The deadline for filing an appeal has passed and the former elected member has not filed an appeal; or

(B) The Trial Court has issued a final ruling upholding the exclusion.

(c) *Elected member appeals.*

(1) Within five (5) business days after receiving notice of his or her exclusion; a former elected member may appeal the Oneida Business Committee's decision to the Trial Court of the Judiciary. Within twenty (20) business days after the appeal is filed, the Trial Court shall conduct a hearing and issue a ruling as to whether the member meets the qualifications for office.

(2) An elected position shall not be re-filled while an appeal is pending. From the time that the appeal is filed until the Trial Court issues a final ruling, the member shall retain all rights and privileges of being a member including voting, participating in decision making, attending entity meetings.

105.15-4. *Ineligibility for other appointment or election.*

(a) *Termination of appointment or removal.* A member who has been terminated or removed is ineligible for appointment or election to any entity for one (1) year from the effective date of the termination or removal. Provided that, if an individual entity's bylaws provide for a longer period of ineligibility; then that longer period shall apply.

(b) *Exclusion.* Exclusion from office; in accordance with 105.15-3; shall not affect a member's eligibility for appointment or election to any entity; as long as the member meets the specific eligibility qualifications for office.

105.15-5. If an entity fails to comply with the requirements of this law, the Oneida Business Committee may suspend payment of stipends to members of the entity, until the entity has attained compliance with this law. The Oneida Business Committee Treasurer shall notify the Accounting Department when stipends shall be stopped, and when stipend payments may resume. Unless the Oneida Business Committee directs otherwise, stipends shall accrue during a suspension and shall be paid out when stipend payment resumes. The Oneida Business Committee may adopt, by resolution, additional or alternative enforcement actions that may be imposed upon an entity for noncompliance with this law.



771 *End.*  
772 

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Adopted - BC-8-2-95-A  
773 Amended - BC-5-14-97-F  
774 Emergency Amendments - BC-03-06-01-A (expired)  
775 Emergency Amendments - BC-04-12-06-JJ  
776 Emergency Amendments - BC-11-12-09-C  
777 Emergency Amendments Extension - BC-05-12-10-I (expired)  
778 Amended - BC-9-27-06-E (permanent adoption of emergency amendments)  
779 Amended - BC-09-22-10-C  
780 Amended -



Legislative Operating Committee  
June 7, 2017

## Cemetery Law Amendments

<b>Submission Date:</b> 8/5/15	<b>Public Meeting:</b> 3/30/17
<b>LOC Sponsor:</b> David P. Jordan	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This request for amendments was brought to the LOC by the Oneida Law Office. Amendments were requested to correct the name of the Cemetery, which was changed by resolution of the Oneida Land Commission on May 11, 2015. Additional revisions may also be necessary to change who is responsible for the cemetery's maintenance.*

**8/5/15 LOC:** Motion by David P. Jordan to add the Cemetery Law Amendments to the active files list with himself as the sponsor; seconded by Fawn Billie. Motion carried unanimously.

**8/12/15 OBC:** Determine responsible area for cemetery maintenance. Item sent to a Business Committee special meeting agenda at the adjournment of the meeting.

**8/17/15 OBC:** Motion by David Jordan to defer this issue to the September 23, 2015, regular Business Committee meeting and direct the Tribal Secretary to schedule the special Business Committee work meeting and that an invitation be extended to all interested parties, including departments and families impacted, seconded by Jennifer Webster. Motion carried unanimously

**9/2/15:** OBC work meeting. Attendees include Brandon Stevens, Tehassi Hill, Fawn Billie, Jennifer Webster, Michelle Mays, Douglass McIntyre, various departments and family members of those buried in the cemetery.

**9/23/15 OBC:** Motion by Lisa Summers to place an indefinite land use moratorium on area designation # 18 'Where the Water Birds Nest', identified in the Public Use of Land Law, and to defer the cemetery issues identified today to the Business Committee Officers for follow-up with a final action plan to be brought by the November 11, 2015, regular Business Committee meeting, seconded by David Jordan. Motion carried unanimously.

Motion by Lisa Summers to direct the Chairwoman's Office to send out communications, regarding the indefinite land use moratorium directive, to the Business Committee's Direct Reports, appropriate Boards, Committees, and Commissions, and affected parties, including sweat lodge users and families impacted, seconded by David Jordan. Motion carried unanimously.

Amendment to the second motion by Melinda J. Danforth to inform users of the sweat lodge and families of the cemetery. Motion fails for lack of support.

**10/7/15 LOC:** Motion by Jennifer Webster to accept the memorandum update and defer the Cemetery Law Amendments back to the Legislative Operating Committee and bring back when ready. Noting that the Legislative Operating Committee is waiting on the four Oneida Business Committee Officers to make a decision regarding cemetery maintenance; seconded by David P. Jordan. Motion carried unanimously.

**11/10/15 OBC:** Motion by Tehassi Hill to accept and approve the recommendations provided in the Business Committee Officers' memorandum dated November 5, 2015, seconded by Jennifer Webster. Motion carried unanimously.

Motion by Jennifer Webster to request the Trust and Enrollment Committee to send out updated communications to the families of the cemetery, seconded by David Jordan. Motion carried unanimously.

**12/16/15 LOC:** Motion by Jennifer Webster to accept the Cemetery Law Amendments memorandum B and to include language which requires communication pertaining to the history of the land and possible issues that may result if encasements are not used; seconded by David P. Jordan. Motion carried unanimously.

**12/23/15 OBC:** Motion by Lisa Summers to accept the Cemetery Action Plan update dated December 3, 2015, and to request the Legislative Operating Committee revisit this item once the study is completed, seconded by Brandon Stevens. Motion carried unanimously.

**1/6/16 LOC:** Motion by Jennifer Webster to defer the draft Cemetery Law Amendments to the Legislative Reference Office for legislative analysis and to the Finance Department for a fiscal impact statement; seconded by David P. Jordan. Motion carried unanimously.

**2/17/16 LOC:** Motion by Jennifer Webster to accept the legislative analysis for the Cemetery Law Amendments and defer to the sponsor pending the results of the hydrogeology study; seconded by Fawn Billie. Motion carried unanimously.

**3/9/16 OBC:** Motion by Tehassi Hill to accept the presentation regarding the Oneida Sacred Burial Grounds per GTC Directive, seconded by Trish King. Motion carried unanimously.

Amendment to the main motion by Tehassi Hill to request an update at the first regular Business Committee meeting in June regarding potential locations of the cemetery, seconded by Trish King. Motion carried unanimously.

**5/4/16 LOC:** Motion by Fawn Billie to defer the Cemetery Law Amendments to the sponsor's office and bring back when ready; seconded by David P. Jordan. Motion carried unanimously.

**6/8/16 OBC:** Motion by Lisa Summers to accept the information in the memorandum from the Trust Department dated May 31, 2016, as information, noting there have been two (2) identified alternative sites for a cemetery should the need arise and to send this item to the next available Officers' meeting for continued follow-up with the overall cemetery work plan, seconded by Tehassi Hill. Motion carried unanimously.

**8/29/16 OBC:** Motion by Lisa Summers to table this item until after the September 28, 2016, regular Business Committee meeting so that we have more information before us, seconded by Brandon Stevens. Motion carried unanimously:

**10/13/16:** *Quarterly Sponsor Update Meeting held.* Present: David Jordan, Krystal John, Leyne Orosco, Tani Thurner, Maureen Perkins, Clorissa Santiago. Work meeting coming up with Trust Enrollments Committee. The group will decide who will administer the contract for management of the cemetery grounds.

**11/4/16:** *Work Meeting held.* Present: Fawn Billie, Susan White, Pat Pelky, Maureen Perkins, Kelly McAndrews, David Jordan, Bonnie Pigman, Tehassi Hill, Jenny Webster. Another work meeting will be scheduled after Thanksgiving- to look at an updated draft- reflecting this meeting.

**11/30/16:** *Work Meeting held.* Present: Pat Pelky, Bonnie Pigman, Susan White, Sheila Huff, Fawn Billie, Tehassi Hill, Jennifer Webster, David Jordan, Cathy Bachhuber, Maureen Perkins

**3/1/17 LOC:** Motion by Fawn Billie to approve the Public Meeting packet and forward the Cemetery Law amendments to a Public Meeting on March 30, 2017, with the noted change; seconded by Tehassi Hill. Motion carried unanimously.

*Note: The noted change is to change “Wednesday” to “Thursday” on the Public Meeting notice.*

**3/30/17:** *Public Meeting held.*

#### **Next Steps:**

- Accept the public meeting comment review memo and direct any changes to the draft.
- Direct the LRO to prepare an adoption packet.



TO: Legislative Operating Committee (LOC)  
FROM: Kelly M. McAndrews, Law Office Staff Attorney  
DATE: June 7, 2017  
RE: Cemetery Law Amendments: Public Meeting Comment Review

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On March 30, 2017, a public meeting was held regarding amendments to the Cemetery Law. This memorandum is submitted as a review of the oral comments received within the public meeting. Written comments were also submitted during the public comment period and those written comments are also addressed in this memorandum. The public meeting draft, public meeting transcript, and written comments are attached to this memorandum for review.

### Comment 1– Purpose and Policy

**127.1-1. Purpose.** The purpose of this law is to establish administrative authority for Oneida Nation cemeteries on the Oneida Reservation, establish cemetery maintenance responsibility, govern the sale, transfer and recordkeeping of plots, establish who is eligible for interment, establish a process for disinterment, and delegate authority pursuant to Oneida laws.

**Nancy Barton [written comment]:** [T]ransfer and recordkeeping this is being currently being done by Enrollments and isn't broke why are you trying to create more confusion and chaos to families that are grieving. Past practices of the land Dept.

### Response

Each of the Nation's Departments has a recordkeeping function; the Trust Enrollment Department is not the sole record keeper for the Nation. *For example, see* Oneida's Open Records and Open Meetings law section 107.6-1, which defines "legal custodians" as being the person who is responsible for the care, custody and release of documents. Each "authority" (governmental body, elected official, or business unit) is required to have a legal custodian. *Id.* at 107.6-4.

Additionally, the Division of Land Management already has jurisdiction over certain deceased tribal member estates. *See generally* Real Property law section 601.8. Probate records, including death certificates ("vital records"), are already retained by the Division of Land Management.

Last, at the public meeting, Susan White addressed this comment with the following statement, "The records issue, the Enrollment area will always be in charge of membership data, so that information will still be maintained by Enrollments under the Trust Enrollment Committee

responsibility. Land Management does also take care of vital records already when it pertains to property issues so it's just a slight expansion there for them."

### ***Recommendation***

No changes to the draft are recommended based on this comment.

### **Comment 2 – Adoption, Amendment, Repeal**

**127.1-2** This law was adopted by the Oneida Business Committee by resolution BC-5-19-89-E and amended by resolutions BC-6-29-05-A, BC-1-14-09-E, BC-07-23-14-B and BC-\_\_\_\_\_.

-and-

**127.2-2** This law may be amended or repealed by the Oneida Business Committee **and/or the Oneida General Tribal Council** pursuant to the procedures set out in the Legislative Procedures Act.

**Cathy L. Metoxen:** This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act. "Why isn't this going to GTC? That's my question. And then. . . it says, "This law is adopted under authority of the Constitution of the law." Where, in the constitution of the law? That's what I would like to know. And once again, I don't even know where to begin here.

**Michael Debraska:** "This may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the LPA." GTC once again left out. [And] "This law is adopted under the authority of the Constitution of the Oneida Nation." It's interesting how it's adopted under the Constitution but the GTC is left out." I thought we were supposed to be the governing body, but apparently not.

### ***Recommendation***

Add the Oneida General Tribal Council to section 127.2-2 per the Legislative Procedures Act.

### **Comment 3– Administration and Authority**

**127.4-3. *Administrative Responsibilities.*** Land Management shall be responsible for the administrative duties for all Oneida Nation cemeteries. These duties include:

- (a) Issuance of disinterment permits, where appropriate. An approved disinterment permit constitutes authorization to transport the remains and reinter the disinterred remains at an approved location within the boundaries of the Oneida Reservation. If the remains are being transported outside the boundaries of the Oneida Reservation other laws may apply and the parties involved are responsible for compliance. Permits shall include:

- (1) Information that is necessary to identify the decedent;
  - (2) The date and place of death;
  - (3) The current place of interment;
  - (4) The intended place of interment, the name of the person requesting the disinterment; and
  - (5) The name of the person in charge of the disinterment.
- (b) Maintaining vital statistics of decedents interred, disinterred, and/or reinterred in an Oneida Nation cemetery, including data derived from certificates of death, fetal death reports or related reports, a report for final disposition, authorization for disinterment or reinterment or related judicial order or any other data as determined by Land Management.
  - (c) Creating long-term strategic plans for Oneida Nation cemeteries and reporting such information as may be required by the Oneida Business Committee or General Tribal Council.
  - (d) Causing portions of land designed to be used for an Oneida Nation cemetery to be surveyed and mapped into plots, drives and walks.
  - (e) Maintain records concerning all plots.
  - (f) Requesting additional portions of land to be designated for use as an Oneida Nation cemetery, if needed.
  - (g) Selling and transferring plots and restricting the use of plots.
  - (h) Administering accounting activities related to the sale or transfer of a plot.
  - (i) Determining how to utilize gifts to an Oneida Nation cemetery.
  - (j) Establishing rules, entering into agreements with person(s) or entities, where needed, in order to carry out their responsibilities under this law.

**Nancy Barton [written comment]:** Maintaining vital statistics is a function listed by memorandum of agreement & Trust Committee by-laws. -Enrollments currently holds and reports that confidential information as needed and requested. Statistical info such as avg. age of death causes etc. Land office cannot and will not be able to provide that information for Grant purposes.

-and-

**Michael Debraska:** [T]here is the Oneida Trust Committee By-Laws and in there it states that the Trust Committee and Enrollments would be responsible for this and now we're going to change it up with an administrative law. What does that do for the MOAs that exist? Are they now garbage? Those are some key fundamental questions that I would like to have answers to.

### ***Response***

See Response to Comment 1 concerning recordkeeping functions by business units.

Additionally, a need to change the MOA does not prevent the implementation of this law. If this law is implemented, any relevant MOA should be reviewed and revised, if necessary.

### ***Recommendation***



No changes to the draft are recommended based on this comment.

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**Nancy Barton:** [M]y comments go towards whose decision it was to give the Land office oversight of the cemetery, because according to the Membership Ordinance and also their by-laws, Enrollments are the official record keeping entity within the Tribe and just because you're deceased does not mean they don't keep those records they have on cause of death, ages of death, all of the statistical information regarding our tribal members. . . .

-and-

**Nancy Barton:** The Enrollment office oversees the life insurance policy, they oversee the statistical data and so what you are trying to do is piecemeal a piece of this and create more confusion and more, another entity that hasn't overseen it, so where my concern is when someone passes away, what will be the role of the Land Office to make sure that their loved ones are buried in a proper and timely manner?

### ***Response***

See Response to Comment 1 concerning recordkeeping functions by business units and, specifically, comments regarding Division of Land Management's involvement in probate matters and retention of vital records.

### ***Recommendation***

No changes to the draft are recommended based on this comment.

## **Comment 4– Maintenance Responsibilities**

**127.4-4. Maintenance Responsibilities.** Land Management shall be responsible for cemetery maintenance duties including:

- (a) Maintaining Oneida Nation cemetery grounds.
- (b) Ensuring the appearance of an Oneida Nation cemetery is kept in accordance with any established rules.
- (c) Entering into agreements and communication with person(s) or entities, where needed, in order to meet the maintenance responsibilities.
- (d) Oversight of any position created to care for the cemetery.

**Nancy Barton [written comment]:** Establish cemetery maintenance this has already been done. The maintenance responsibility lies within the enrollment department who oversees the contract for an outside vendor due to the on-going unsatisfactory job that DPW had been doing. I am against the land office becoming involved in any way with the maintenance of the cemetery including re-newing contracts or selling plots. This is already being done by enrollments with the satisfaction of the families who have loved ones buried there.

-and-



**Nancy Barton:** [T]hings have slowly progressed into taking care of it. We have an outside maintenance coming in. DPW is no longer in charge of the maintenance there and I will make sure till the day I die that they don't get it back. . . .

**Cathy Metoxen:** [T]his item of the cemetery maintenance duties has been on the BC agenda for some time. I don't recall it ever coming to a resolution. . . .

### ***Response***

Section 127.4-4(c) delegates Land Management the authority to enter into agreements to ensure maintenance responsibilities for the grounds are met. Any existing agreement for maintenance would be assumed by Land Management.

Previously, the "Maintenance Responsibilities" section of the law did not exist and this section was added to clarify Land Management's duty and responsibility to the cemetery grounds.

### ***Recommendation***

No changes to the draft are recommended based on this comment.

## **Comment 5– Public Health Emergency and Communicable Diseases**

**127.4-5. *Public Health Emergency and Communicable Diseases.*** The Community Public Health Officer shall, in a state of emergency related to public health as duly proclaimed, issue and enforce orders that are reasonable and necessary to provide for the safe disposal of remains in an Oneida Nation cemetery. This includes the power to take possession or control of any remains and make orders specific to embalming, interment, cremation, disinterment, transportation, or other disposal. Additionally, the Community Public Health Officer may:

- (a) Determine conditions and order a specific method of disposal of remains in an Oneida Nation cemetery of a decedent who has died of a communicable disease that is dangerous to public health, within a reasonable or necessary timeframe, as determined by the Community Public Health Officer.
  - (1) The Community Public Health Officer shall provide and maintain a list of communicable diseases and other notifiable conditions to affected departments and the public by request.
- (b) Require the labeling of all remains before disposal in an Oneida Nation cemetery with all available identifying information and information concerning the circumstances of death and, in addition, require the remains of a decedent with a communicable disease be clearly tagged to indicate that remains contain a communicable disease and, if known, the specific communicable disease.
- (c) Maintain or require the maintenance of a written or electronic record of all remains that are disposed of in an Oneida Nation cemetery, including all identifying information and information concerning the circumstances of death and disposal.

**All written and electronic records are strictly confidential and may only be released following applicable laws.** If it is impossible to identify remains prior to disposal in an Oneida Nation cemetery, the Public Health Officer or designee may request that the local coroner or medical examiner obtain any fingerprints, photographs, or identifying dental information, and/or collect a specimen of deoxyribonucleic acid from the remains and transmit this information to any other interested public health authority.

**Nancy Barton [written comment]:** Overstepping authority potentially maintaining, adding another entity that releases confidential information such as dental data breach.

-and-

**Nancy Barton [written comment]:** Communicable diseases die with the person.

-and-

**Nancy Barton [written comment]:** [I] am in total disagreement of transferring anything to do w/ the cemetery to the land office and the releasing any recordings concerning cause of death to any one at the Oneida Health Center and certainly not to the Community Public Health Officer. His job is to figure out that while people are alive.

-and-

**Nancy Barton:** [I]t seriously does not make sense that a portion of that entity would go to the public health official at the health center, who is involved with Emergency Management and the Law Office who all of a sudden decided that the Land Office and the Public Health Officer are now going to see, oversee all the functions of the cemetery. . .

-and-

**Michael Debraska:** [I]t seems to address four separate areas and entities here that are now allowed this rulemaking authority. Land Management being the first, the ERB Board or Environmental Resource being second, Emergency Management and Homeland Security being third and then finally fourth, the Community Public Health Officer. I would like to know who is our Public Community Health Officer? I don't even know who that is.

### ***Response***

Public health departments engage in preparedness activities. *For example, see* Public Health Emergency Response Guide for State, Local, and Tribal Public Health Directors, U.S. Dep't. of Health and Human Svs., Version 2.0, April 2-11, p. 7. Wisconsin has created the Wisconsin Public Health Authorities Fact sheet, which is located on-line at: <https://www.networkforphl.org/asset/j6zrb8/Wisconsin-Public-Health-Authorities-Fact-Sheet-051403-3.pdf>. In Wisconsin, local health officers are required to take "all measures necessary to

prevent, suppress and control communicable diseases”. *Id.* at 2. Wisconsin recognizes that all Wisconsin tribes operate health programs and cooperates and collaborates with tribes. *Id.* at 2.

Infectious hazards exist for individuals who handle cadavers, including: tuberculosis, group A streptococcal infection, gastroenteritis, transmissible spongiform encephalopathies (such as Cruetzfeldt-Jakob disease), hepatitis B, hepatitis C, HIV infection, and possibly meningitis and septicemia. *See* Oliver Morgan, Infectious disease risks from dead bodies following natural disasters, p. 308, 2004.

The state of Wisconsin has health laws to protect its residents from injury, disease, disability, and death. For example, Wisconsin requires coroners or medical examiners to report certain deaths (known/ suspected communicable disease) to the local health department. Wis. Stat. §979.012. Communicable Diseases or Other Notifiable Conditions are contained in WI DHS 145 Appendix A, where diseases are categorized as “urgent” (example: plague), “acute” (example: transmissible spongiform encephalopathy), or “reportable” (example: HIV). *See also* Wis. DHS 135.05 (stating, in part, “[N]o person may embalm a corpse unless that person is licensed as a funeral director, and no member of the immediate family may prepare a corpse for burial or other final disposition if there is a risk of transmitting communicable disease from the corpse, either because a communicable disease was the cause of death or the individual had a communicable disease at the time of death, unless the local health officer determines that the risks of transmitting the disease from the corpse are minimal.”) Additionally, Wisconsin regulates the disposal of human remains during a state of emergency to public health officials. *See* Wis. Stat. § 157.055.

Since public health authorities are already delegated the duties and responsibilities listed above, these duties and responsibilities were codified in this law to make clear: a.) The existing process; and b.) That Oneida retains its jurisdiction over individuals buried in its cemetery, rather than ceding its authority to another entity.

Last, Oneida’s Emergency Management and Homeland Security law already grants broad power concerning the investigation, restriction, and disease control measures. *See* Sec. 302.7. The above provision simply clearly spells out the duties and responsibilities of the Public Health Officer in a duly proclaimed state of emergency related to public health.

### ***Recommendation***

The LOC may want to consider adding language to section 127.4-5(c) ensuring the confidentiality of written and electronic records maintained by the Community Public Health Officer only to be released under specific circumstances.

## **Comment 6– Ownership of Plots**

**127.5-2. Ownership of Plots.** Plots in an Oneida Nation cemetery may be purchased by anyone for individuals eligible to be interred in an Oneida Nation cemetery, as defined in section 127.5-1, but the owner of the plot shall be the individual for whom the plot was

purchased, if living, and shall be specified at purchase. Purchase of a plot does not result in any ownership rights in the plot itself, but grants an individual the right to be interred in the plot or determine who will be interred in the plot, subject to the eligibility requirements of this law.

(a) In the event the owner of a plot becomes ineligible to be interred in an Oneida Nation cemetery, the plot shall be resold to the Nation in accordance with section 127.5-2(c).

(b) A plot is not inheritable, but may be transferred from the owner to an individual eligible to be interred in an Oneida Nation cemetery. The transfer of a plot from one owner to another shall be processed through Land Management.

(c) A plot may only be resold by the owner of the plot to the Nation through Land Management. Plots resold to the Nation shall be bought for the original purchase price. The following owners of plots may resell a plot to the Nation:

- (1) Competent individuals who are at least eighteen (18) years of age;
- (2) Individuals who are less than eighteen (18) years of age, with the written permission of the original purchaser of the plot; and
- (3) Incompetent individuals who are at least eighteen (18) years of age, with the permission of their guardian or appropriate power of attorney.

**Nancy Barton [written comment]:** Transfer of plot one owner to another. How can anyone be guaranteed this will happen when 22 homes are currently open and the land office has not found any alternative cemetery sites??

### *Response*

**Nancy Barton [written comment]:** Again listing Land Mngt. When enrollments already does it. There are approximately 70 people or more people buried there in the last 15 years. It should not be an exhausting task to plot out the grave and meet with the funeral home on site.

### *Recommendation*

No changes to the draft are recommended based on this comment.

## **Comment 7– Interment and Plots**

**127.6-1.** All interments shall be approved by Land Management prior to interment to ensure the health and safety of the public will not be endangered, that the plot is properly marked, and to provide information to any company or contractor providing services for the interment.

(a) In any case in which a decedent will be buried in an Oneida Nation cemetery, Land Management shall report any known situations involving communicable diseases to Oneida’s Community Public Health Officer for investigation. The Community Public Health Officer may determine conditions for disposal of the remains in accordance with section 127.4-5.

**Nancy Barton [written comment]:** Again involving. . . the OCPH officer I have never seen a report from him in an manner including the epidemic and infestation of head lice in the Oneida turtle school. Although diabetes is not communicable it is also an epidemic he should concern himself with.

***Response***

This comment is not specific to this legislation. *See* Response to Comment 5 for an explanation of the role of a Public Health Officer.

***Recommendation***

No changes to the draft are recommended based on this comment.

**Comment 8– Cost of Interment**

**127.6-3. *Cost of Interment.*** All fees for the cost of a plot and/or an interment, or disinterment or re-interment, including all the below listed fees, are the responsibility of the decedent’s estate, if any, family assuming responsibility, or other individual assuming legal responsibility for the remains, unless otherwise stated. Land Management shall create rules regarding plot and marking fees.

**Nancy Barton [written comment]:** Enrollments has set out processes & procedures for selling plots & fees.

***Response***

The authority to selling plots and set fees is authorized by this law.

Raeann Skenandore provided the following comment which is also responsive, “One more thing. As far as implementation and compliance, Division of Land Management did request approximately six months to complete the rulemaking and set up the processes.”

***Recommendation***

No changes to the draft are recommended based on this comment.

**Comment 9– Not codified in the law- cemetery location**

**Cathy Metoxen:** When my son had died, that’s my issue, is throughout the whole entire process, I got lied to and I wasn’t told the truth and then I found it out after and I said, my stance is that I want my son out of there. I want him moved out of there and not at my expense because I was lied to by your people, meaning the structure within the Tribe that exists. I was misled to believe a number of different things and since then I found out that it’s different. I got tired. I don’t agree with what you’re doing here because your mentality is, the terms were used for the people was poor and dumb and those words were used by the people within the Trust Committee to describe, me for one, I took it personally, because I was called a dumb and poor person and

I'm going to stand here again and say I disagree with what you guys do because you're not honest about it. You're not straightforward about it, there's been too many lies through the whole thing and I haven't had a chance to read this fully, but I will be adding a written comment. But once again I feel like this is some, there's something more behind it.

**Kathleen Kohler:** Somebody told us they're going to move it. They're finding us a nicer place for our loved ones so they don't have to be soaking wet. They went through hell on this earth and I don't think they should go through hell anymore. The bottom line is I would like to get some answers back from yous. And if you can't find my address give it to, give it to Mike, he'll find a way to get us our answers. We have newspaper with, we're supposed to have our own newspaper out there, nothing's in there. We just hear it from these people. I would like through him my family to be nice and dry when they go down. . . .

**Brad Graham:** Like the woman here said, we need to take care of the people that are in there and get that straightened out. You guys are constantly sitting here making rules, policies and procedures and like Mike said, you're putting people in here who shouldn't be in here. You're designating people to make rulemaking authority that have no rights to make rules. I think the first thing that you should do is just throw this out and let's find a location for the people and then get the people out of that swamp land and put in a new place.

### ***Response***

This law is not specific regarding a cemetery location and can, therefore, be implemented regardless of cemetery location.

Susan White provided the following comments which are also responsive, "Good afternoon, I'm Susan White, Trust/Enrollment Director and I just wanted to add some comments about the due diligence and the history of the work that's gone into improving the cemetery. Just basically that the Trust/Enrollments did create, help create the cemetery working group who is comprised of DPW and the Engineering and the Planning Divisions as well as other entities and improvements have been brought forward to the BC in public meeting and the Business Committee has approved future improvements in phases and also with the budget approval now we can move forward with a lot of those improvements. So the relocation of the cemetery was an idea but it was never fully implemented because we found that it would be in the best interest to improve the grounds as underground great improvement already with many hours and probably like a half a million dollars put into it to make it as a nice place as it is." and "The information has been sent to families of the cemetery in flyers. We also publish articles in the Kalihwisaks and we also talked about this in the semi-annual report that we give to GTC in the GTC books."

### ***Recommendation***

No changes to the draft are recommended based on this comment.





Legislative Operating Committee  
June 7, 2017

# General Tribal Council Meetings Law

<b>Submission Date:</b> 9/17/14	<b>Public Meeting:</b> 12/6/12
<b>LOC Sponsor:</b> Fawn Billie	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This item was carried over into the current term by the LOC. This proposal is for a new law to govern the scheduling and conducting of GTC meetings, including: a standard agenda format and a code of conduct for those in attendance; outlining the duties of those preparing and assisting with GTC meetings, and establishing how petitions would be processed.*

**9/17/14 LOC:** Motion by Fawn Billie to add the following five items to the Active Files List: GTC Meetings Law; Petition: Directing a “Stall Mall” be Created; Petition: Publishing Names and Addresses of Petition Signers in GTC Mailouts; Petition: Real Estate Taxes for all Tribe Owned Property to be Paid by Tribe; Petition: Responding to Questions and Comments from the Floor at GTC; seconded by Tehassi Hill. Motion carried unanimously.

*Note: Fawn Billie will be the sponsor for this item*

**11/12/14 OBC:** Motion by Melinda J. Danforth to defer the GTC Petitions Process SOP to a Business Committee work meeting for discussion, seconded by Fawn Billie. Motion carried unanimously.

**4/3/15 LOC:** Motion by Jennifer Webster to forward the GTC Meetings Law to the Oneida Business Committee to put on the next GTC agenda; seconded by Tehassi Hill. Motion carried unanimously.

**4/22/15 OBC:** Deleted from the agenda at the adoption of the agenda since this item was already included in the July 6, 2015 GTC backup.

**7/6/15 GTC:** Motion by Madelyn Genskow that the General Tribal Council Meetings Law be remanded back to the Legislative Operating Committee for changes, including Public Meetings for comments, and that the mailing be provided to all voting members; seconded by Sherrole Benton. Motion carried by show of hands.

**8/5/15 LOC:** Motion by David P. Jordan to defer the GTC Meetings Law to a work meeting; seconded by Fawn Billie. Motion carried unanimously.

**9/1/15:** *Work meeting held.* Attendees include Brandon Stevens, Tehassi Hill, Fawn Billie, Jennifer Webster, David P. Jordan, Rhiannon Metoxen, Steve Webster, Cheryl Skolaski, Bradley Graham, Bill Graham, Krystal John, Candice Skenandore, Douglass McIntyre.

**11/18/15 LOC:** Motion by Fawn Billie to defer the GTC Meetings Law with the noted changes for a legislative analysis and fiscal impact statement; seconded by David P. Jordan. Motion carried unanimously.

*Noted changes include the following:*

- *Require the Tribal Secretary to provide a petition form with instructions;*
- *Require one subject matter per petition (does not limit the number of resolutions so long as they apply to the topic);*

- *Limit the number of resolutions that can be heard at a GTC meeting;*
- *Defer the discussion regarding denying a vote on matters deemed illegal or unconstitutional;*
- *Expand the 60-day timeframe under 11.5-5 (a);*
- *Add specific deadlines for each required analysis (legal, legislative & fiscal);*
- *If a petition is denied, notice must be provided to the petitioner and those that signed the petition stating the reason(s) why the petition was denied;*
- *Amend the list under 11.5-8 to be more common sense;*
- *Include when an alternate may be assigned for representing a petition;*
- *Identify the forums, media that can be used at GTC and specify who can utilize them for presentations;*
- *Remove the 2-minute time limit under 11.8-5 (c) and allow GTC, at the start of the GTC meeting, to determine if a time limit is necessary, and if so, identify the time limit;*
- *Require the OBC to adopt a GTC security plan; and*
- *Identify who is allowed to videotape*

**12/9/15 OBC:** Motion by Lisa Summers to request the Internal Security Department provide a Plan of Action related to Rules of Decorum and their enforcement and for the Plan of Action to be presented to the Business Committee on December 22, 2015, for input and feedback, seconded by Jennifer Webster. Motion carried unanimously.

**1/4/16 and 2/20/16 GTC:** Motion by Brad Graham to adopt the agenda with the deletion of item 4. Adopt the Rules of Decorum and Appoint Sergeant-at-Arms. Seconded by Mike Debraska. Motion carried by show of hands.

**4/27/16 OBC:** Motion by Jennifer Webster to approve the Tribal Secretary filing copyright and any other legal requests to remove General Tribal Council videos from YouTube channel, seconded by Tehassi Hill. Motion carried unanimously.

**7/25/16:** *Work Meeting held.* Meeting held for an update on the status of this item. Attendees include Jen Falck, Tani Thurner, Jo Anne House.

**9/14/16 LOC:** Motion by Lisa Summers to adopt resolution # 09-14-16-A Rules of Decorum for General Tribal Council Meetings, seconded by Jennifer Webster. Motion carried unanimously:

**10/7/16:** *Quarterly Sponsor Update Meeting held.* Present: Fawn Billie, Cathy Bachhuber, Jennifer Falck, Tani Thurner, Maureen Perkins, Clorissa Santiago. LRO Director will schedule a work meeting and invite the BC Secretary. The Trust Enrollment Dept (Bonnie Pigman) has concerns about combining the GTC stipend policy, the 10 day notice, and the GTC meetings law into one document- because it may become more challenging to make amendments.

**11/1/16.** *Work meeting held.* Present: Brandon Stevens, Susan White, Jenny Webster, Maureen Perkins, Bonnie Pigman, Jo Anne House, Lisa Summers. Waiting for new draft based on this meeting.

**3/1/17:** *Work meeting held.* Present: Tani Thurner, Brandon Stevens, Maureen Perkins, Jo Anne House, Cathy Bachhuber, Fawn Billie, Tehassi Hill, and Jessica Wallenfang (minutes)

**4/3/17:** *Work meeting held.* Present: Danelle Wilson, Tani Thurner, David P. Jordan, Jennifer Webster, Cathy Bachhuber, Jo Anne House

**4/13/17:** *Work meeting held.* Present: David P. Jordan, Cathy Bachhuber, Tani Thurner, Jennifer Webster, Fawn Billie, Tehassi Hill. Draft updated and sent out for one final review; with comments due to LRO director by April 24, 2017.

**5/3/17 LOC:** Motion by Jennifer Webster to approve the draft and forward the General Tribal Council Meetings law for a legislative analysis due back to the Legislative Operating Committee by May 17, 2017; seconded by Tehassi Hill. Motion carried unanimously.



Motion by Jennifer Webster to have Brandon Stevens put the General Tribal Council Meetings law on the May 15, 2017 Oneida Business Committee work meeting agenda; seconded by Fawn Billie. Motion carried unanimously.

**5/17/17 LOC:** Motion by David P. Jordan to approve an extension to June 7, 2017 for the legislative analysis to be completed; seconded by Fawn Billie. Motion carried unanimously.

**Next Steps:**

- Approve the Public Meeting packet and forward the GTC Meetings Law to a June 29, 2017 Public Meeting.

NOTICE OF  
**PUBLIC MEETING**

TO BE HELD  
**THURSDAY, JUNE 29 at 12:15 p.m.**  
IN THE  
**OBC CONFERENCE ROOM**  
**(2<sup>nd</sup> FLOOR—NORBERT HILL CENTER)**

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

**TOPIC: GENERAL TRIBAL  
COUNCIL MEETINGS LAW**

**This is a proposal for a new Tribal law which would:**

- ◆ Create a schedule for GTC meeting dates *[see 118.4].*
- ◆ Outline the petition process *[118.5].*
- ◆ Set a general agenda for GTC meetings *[see 118.8].*
- ◆ Set standards of conduct for attending GTC meetings *[see 118.9].*
- ◆ Outline the duties of those preparing and assisting with GTC Meetings *[see 118.9].*

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings) or contact the Legislative Reference Office.

**PUBLIC COMMENT PERIOD  
OPEN UNTIL FRIDAY JULY 7, 2017**

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

**Legislative Reference Office**  
**PO Box 365 Oneida, WI 54155**  
**LOC@oneidanation.org**  
Phone: (920) 869-4376 or (800) 236-2214  
Fax: (920) 869-4040



# General Tribal Council Meetings Legislative Analysis

## SECTION 1. BACKGROUND

REQUESTER: LOC	SPONSOR: Fawn Billie	DRAFTER: Taniquele J. Thurner	ANALYST: Maureen Perkins
<b>Intent of the Law</b>	The intent of this law is to create organization and consistency for General Tribal Council (GTC) meetings.		
<b>Purpose</b>	The purpose of this law is to create a schedule of GTC meeting dates, set a general agenda for those meetings, outline the petition process, set standards of conduct for those attending meetings, and outline the duties of those preparing and assisting with the meetings <i>[see 118.1-1]</i> .		
<b>Affected Entities</b>	The GTC, the Secretary's Office, Oneida Business Committee (OBC), Legislative Reference Office (LRO), Business Committee Support Office (BCSO), Trust Enrollments Department, Oneida Judiciary,		
<b>Affected Legislation</b>	General Tribal Council Meeting Stipend Payment Policy, Oneida General Tribal Council Ten Day Notice Policy, Open Records and Open Meetings law, Oneida Nation Constitution, Election Law		
<b>Enforcement/Due Process</b>	Any individual who violates the general conduct requirements identified in section 118.9-2(a), or who is found to be making an audio or video recording of a General Tribal Council meeting, may be prohibited from attending the meeting or may be removed from the meeting <i>[see 118.9-2(c)(2)]</i> . The Sergeant-at-Arms or designee is responsible for enforcing this provision, upon discovery of a violation or at the direction of the Chairperson of the meeting <i>[see 118.9-2(c)(2)(A)]</i> . An individual removed from a GTC meeting shall not be allowed to return for the duration of the meeting and shall forfeit any meeting stipend for which he or she would have been eligible, in accordance with the General Tribal Council Meeting Stipend Payment Policy <i>[see 118.9-2(c)(2)(B)]</i> .		
<b>Public Meeting</b>	A public meeting has not been held this term. A public meeting was held in the previous term on 12/6/12.		

## SECTION 2. LEGISLATIVE DEVELOPMENT

- A. This proposal is for a new law to govern the scheduling and conducting of GTC meetings, including: a standard agenda format and a code of conduct for those in attendance; outlining the duties of those preparing and assisting with GTC meetings, and establishing a process for petitions, public meetings, public comment period, and public meeting follow up.

## SECTION 3. CONSULTATION

- A. The Oneida Law Office and the Secretary's Office were consulted regarding the development of this law.
- B. Current laws in place that were reviewed in this analysis include the GTC Meeting Stipend Payment Policy *[see O.C. Chapter 111]* and the GTC Ten Day Notice Policy *[see O.C. Chapter 110]*.

## SECTION 4. PROCESS

- 14 **A.** The correct legislative process has been followed.
- 15 **B.** This item was carried over into the current term by the LOC and added to the current Active Files List
- 16 on 9/17/14. The law was presented to the GTC on 7/6/15 and the GTC tabled it and remanded it back
- 17 to the LOC for changes including public meetings for comments regarding changes and that all voting
- 18 GTC members receive a 10 day notice mailing that the law will be on a GTC agenda. A public
- 19 meeting was held in the previous term on 12/6/12 and was presented to the GTC on 7/6/15. GTC
- 20 motion:
- 21 • 7/6/15 GTC: Motion by Madelyn Genskow to table the General Tribal Council Meetings Law
  - 22 be remand it back to the Legislative Operating Committee for changes, including public
  - 23 meetings for comments, and that the mailing be provided to all voting members when
  - 24 presented to GTC again; seconded by Sherrole Benton. Motion carried by show of hands.
- 25

## 26 **SECTION 5. CONTENTS OF THE LEGISLATION**

### 27 **A. Setting GTC Meeting Dates**

- 28 • Regular annual and semi-annual meetings will be held in January and July per the Constitution
- 29 *[see 118.4-1]*. Budget meetings will be held at least once a year and as often as necessary to adopt
- 30 the Nation's budget for the upcoming fiscal year *[see 118.4-2]*. Special meetings will be held as
- 31 necessary; but no less than twice per year, to address GTC business, including petitions, in
- 32 accordance with the Constitution *[see 118.4-3]*.

### 33 **Petitions**

- 34 • Eligible voters may submit completed petition requests to the BCSO *[see 118.5-1]*.
- 35 • Standard petition forms, resolution templates and instructions will be created by the Secretary's
- 36 Office *[see 118.5-2]*. Petitioners may consult with the LRO regarding the specific wording of
- 37 the petition *[see 118.5-2(a)]* and the Secretary's Office with preparing the petition form and
- 38 scheduling meetings between the petitioner and the OBC *[see 118.5-2(b)]*.
- 39 • The requirements for a completed petition are detailed in section 118.5-4.
- 40 • Petition processing is detailed in section 118.5-5.
- 41 • OBC review of submitted petitions is detailed in section 118.5-7.
- 42 ○ Petitions can be rejected for lack of verified signatures *[see 118.5-7(a)(1)]* or for
- 43 requesting unconstitutional actions *[see 118.5-7(a)(2)]*.
- 44 • OBC will meet with petitioners to determine if alternative solutions exist to address the
- 45 petitioners concerns without holding a special GTC meeting *[see 118.5-8]*. Additional petition
- 46 detail is contained in sections 118.5-9 to 118.5-12.

### 47 **Special GTC Meetings Called by the Chair**

- 48 • The OBC Chairperson may call a special GTC meeting according to the Constitution *[see 118.6]*.

### 49 **Holding a GTC meeting**

- 50 • Detail related to holding GTC meetings is contained in section 118.7 including notice, quorum,
- 51 eligibility requirements, registration, cancelled meetings, and rescheduling a meeting.

### 52 **GTC Meeting Agenda**

- 53 • Detail related to the agenda for GTC meetings is contained in section 118.8.

### 54 **Additional Responsibilities**

- Detail related to the Sergeant-at-Arms [see 118.9-1], GTC meeting attendees requirements [see 118.9-1] and the responsibilities of the Secretary's Office [see 118.9-3] are contained in section 118.9.

#### **Administrative Hearing Bodies**

- Administrative hearing bodies are not authorized to hear any actions arising from the law [see 118.10-1].

#### **Rulemaking Authority**

- The Oneida Nation Secretary has been granted rulemaking authority to create rules related to entities that assist with GTC meetings [see 118.9-3(a)(2)].

**B.** The proposed legislation is very wordy and contains more detail than is necessary.

### **SECTION 6. INTENT**

**A.** The purpose of the law is to create a schedule of General Tribal Council meeting dates, set a general agenda for those meetings, outline the petition process, set standards of conduct for those attending meetings, and outline the duties of those preparing and assisting with the meetings [see 118.1-1].

### **SECTION 7. EFFECT ON EXISTING LEGISLATION**

**A.** The law does not conflict with any current laws in place.

### **SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS**

**A.** The proposed legislation creates a process regarding existing rights, privileges, benefits and obligations related to GTC meetings.

**B.** Due process is addressed that allows petitioners to file appeals related to submitted petitions to the Judiciary.

**C.** The legislation creates a process for GTC meetings which will supersede processes currently in place.

### **SECTION 9. ENFORCEMENT**

**A.** The law will be enforced by the OBC, the appointed Sergeant-at-Arms and the Judiciary.

**B.** The Secretary's Office and the OBSO will provide the human resources to enforce this law.

### **SECTION 10. ACCOUNTABILITY**

**A.** The Secretary's Office and the OBC have a large role in the implementation and operation of the law.

### **SECTION 11. OTHER CONSIDERATIONS**

**A.** The analyst consulted with the Secretary's Office and they indicated that the law does not contain some of the provisions initially requested by the Secretary's Office.

**B.** The LOC may consider defining General Tribal Council in the list of definitions [see 118.3-1] similar to the GTC Meeting Stipend Payment Policy [see O.C. Chapter 111] which is related legislation. The GTC Meeting Stipend Payment Policy defines the General Tribal Council as "the governing body of the Oneida [Nation], which is composed of the qualified voters of the Tribe, as determined by the

97 Constitution of the Oneida [Nation] [see O.C. 111.3-1(a)]. This verbiage matches the Oneida Nation  
98 Constitution. In this case; this law would use the term qualified voter which is the verbiage used in  
99 the Constitution, instead of eligible voter, which is used in this law.

100

## **Title 1. Government and Finances - Chapter 118**

### **GENERAL TRIBAL COUNCIL MEETINGS**

118.1. Purpose and Policy  
118.2. Adoption, Amendment, Repeal  
118.3. Definitions  
118.4. Setting General Tribal Council Meeting Dates  
118.5. Petitions

118.6. Special General Tribal Council Meetings Called by the  
Chairperson  
118.7. Holding a General Tribal Council Meeting  
118.8. General Tribal Council Meeting Agenda  
118.9. Additional Responsibilities

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#### **118.1. Purpose and Policy**

118.1-1. *Purpose.* The purpose of this law is to create a schedule of General Tribal Council meeting dates, set a general agenda for those meetings, outline the petition process, set standards of conduct for those attending meetings, and outline the duties of those preparing and assisting with the meetings.

118.1-2. *Policy.* It is the policy of the Nation to hold consistent, organized General Tribal Council meetings to enable General Tribal Council members to participate and provide input in a respectful and meaningful way.

#### **118.2. Adoption, Amendment, Repeal**

118.2-1. This law was adopted by the General Tribal Council by resolution GTC#\_\_\_\_\_.

118.2-2. This law may be amended or repealed by the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

118.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

118.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

118.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **118.3. Definitions**

118.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Business Committee Support Office” means the office that provides administrative support to the Oneida Business Committee.

(b) “Chairperson” means the Chairperson of the Nation, and the Vice-Chairperson of the Nation while he or she is assuming the Chairperson’s duties in the Chairperson’s absence.

(c) “Constitution” means the Oneida Nation Constitution.

(d) “Defamatory” means a statement that is injurious to a person’s reputation; it includes libel (written statements) and slander (spoken statements).

(e) “Eligible voter” means an enrolled Tribal member who is eighteen (18) years of age or older.

(f) “Entity” means a program, division, department, board, committee, commission or similar business unit of the Nation. It does not include the Oneida Business Committee or the governing body of a Tribally chartered corporation.

(g) “Judiciary” means the judicial system responsible for applying the laws of the Oneida Nation. The three branches, as identified in resolutions BC-05-08-13-A and GTC 01-07-13-B are the Family Court, Trial Court and Appellate Court.

(h) “Kalihwi·yó” means the good mind principle which represents “the use of the good words about ourselves, our Nation, and our future.”

(i) “Libel” means a written statement that is injurious to another person’s reputation.

(j) “Nation” means the Oneida Nation.

(k) “Petition” means a document signed by not less than fifty (50) eligible voters, which requests a special General Tribal Council meeting be held to address a specific item, in accordance with Art. III, section 6 of the Constitution.

(l) “Petition analyses” means the following:

(1) A statement of effect prepared by the Legislative Reference Office, which explains the effects adopting a resolution will have on the Nation’s laws.

(2) A fiscal analysis prepared by the Nation’s Finance Department identifying the total fiscal year financial effects associated with a petition; including startup costs, personnel, office, and documentation costs; as well as an estimate of the amount of time necessary for an individual or agency to comply with the petition after implementation; and

(3) A legal analysis prepared by the Oneida Law Office which discusses the ability to legally take action requested in a petition, based on parliamentary issues, including prior General Tribal Council actions and conflicts with federal law and/or the Constitution or laws of the Nation.

(m) “Rule” means a set of requirements enacted by an authorized agency that implement, interpret and/or enforce a law of the Nation.

(n) “Secretary” means the Nation’s Secretary, or designee.

(o) “Secretary’s Office” means the office of the Nation’s Secretary, or designee.

(p) “Slander” means a spoken statement that is injurious to another person’s reputation.

(q) “Special meeting” means a meeting of the General Tribal Council other than the annual, semi-annual and budget meetings.

(r) “Toll” means to pause, to put on hold.

(s) “Tribal member” means an individual who is an enrolled member of the Nation.

#### **118.4. Setting General Tribal Council Meeting Dates**

118.4-1. *Regular Meetings.* Annual and semi-annual General Tribal Council meetings shall be held in January and July, in accordance with Art. III, section 4 of the Constitution.

118.4-2. *Budget Meetings.* A General Tribal Council meeting shall be held at least once a year and as often as required for the primary purpose of adopting the Nation’s budget for the upcoming fiscal year.

118.4-3. *Special Meetings.* Special meetings shall be scheduled as necessary; but no less than twice a year, in order to address General Tribal Council business, including petitions. Additional special meetings may be called in accordance with Art. III, section 6 of the Constitution.

#### **118.5. Petitions**

118.5-1. *Petition Requests.* An eligible voter may request to place an item on a General Tribal Council meeting agenda by submitting a completed petition form to the Business Committee Support Office. A petition shall be on the standard form and may only address one (1) subject matter. A petitioner is not required to submit a resolution with a petition; however if the petitioner wishes to do so, then the petitioner may submit no more than one (1) proposed resolution for each petition.

118.5-2. *Petition Form and Assistance.* The Secretary’s Office shall create a standard petition



form, a standard resolution template, and instructions to complete these materials; and shall make the form, template and instructions available to any Tribal member upon request.

(a) A petitioner may consult with the Legislative Reference Office before deciding upon the specific wording to be used in a petition. Provided that, the petitioner is ultimately responsible for the final wording of his or her petition; and the guidance provided by the Legislative Reference Office is intended solely to minimize the risk of delays that may result from unclear or ambiguous petition language.

(b) At a petitioner's request, the Secretary's Office shall assist the petitioner with preparing a petition form; and may provide assistance in scheduling meetings between the petitioner and the Oneida Business Committee, as may be authorized or required by this law.

118.5-3. *Signatures.* Employees of the Nation who are collecting petition signatures shall do so in accordance with all laws and policies of the Nation.

118.5-4. *Completed Petitions.* A completed petition shall contain the following:

- (a) The name, address and enrollment number of the petitioner;
- (b) A telephone number for the petitioner and an e-mail address if available;
- (c) A summary of the reason for the petition, including the action being requested and whether additional documents are attached;
- (d) Any additional documents, if applicable;
- (e) At least fifty (50) original signatures from eligible voters; as required by Article III, Section 6 of the Constitution.

(1) *Required Information.* In order for an eligible voter's signature to count towards the minimum requirement, an individual shall:

- (A) sign and print his or her name;
- (B) provide his or her enrollment number and birth date.

(2) *Invalid Signatures.* A petition signature shall be deemed invalid if the Trust Enrollment Department is unable to verify any of the information required by section 118.5-4(e)(1); including but not limited to, where the required information is missing, not legible, or does not match the information maintained on file with the Trust Enrollment Department.

(f) An oath verifying that:

- (1) The circulator witnessed each person sign the petition,
- (2) Each signature appearing thereon is the genuine signature of the person it purports to be, and
- (3) The petition was signed in the presence of the circulator on the date indicated.

118.5-5. *Processing a Petition.*

(a) The Business Committee Support Office shall forward a completed petition to the Trust Enrollment Department to verify the number of eligible voters that have signed the petition.

(b) The Business Committee Support Office shall create standard operating procedures identifying how petitions shall be internally processed after verification results are received from the Trust Enrollment Department.

118.5-6. A petitioner may withdraw his or her petition at any time by submitting written notice to the Business Committee Support Office. Once withdrawn, a petition may not be re-submitted or used in any other proceeding.

(a) By signing a petition, an eligible voter is indicating that he or she supports presenting the subject-matter of the petition to the General Tribal Council for discussion and

consideration; however the ultimate decision regarding whether to withdraw a petition belongs exclusively to the petitioner.

118.5-7. *Oneida Business Committee Review of Petition.* At an open meeting of the Oneida Business Committee, the Committee shall review the petition and verification results.

(a) *Rejected Petition.* The Oneida Business Committee shall reject a petition if the verification results reveal that fewer than fifty (50) eligible voters signed the petition; or if the petition is requesting the General Tribal Council to take action that would violate the Constitution.

(1) *Insufficient Signatures.* The Oneida Business Committee shall reject all petitions that do not contain a minimum of fifty (50) signatures from eligible voters.

(A) Within thirty (30) days after the Oneida Business Committee rejects a petition for insufficient signatures, the Secretary's Office shall send written notice to the petitioner, identifying that his or her petition was rejected because it contained less than fifty (50) verified signatures from eligible voters. The notice shall also identify how the petitioner may appeal this determination.

(B) Within thirty (30) days after receiving notice, the petitioner may appeal the Oneida Business Committee's decision to the Judiciary's Court of Appeals.

(i) If the Court of Appeals upholds the determination that the petition contains insufficient signatures, the petition shall be dismissed, and no further action shall be taken regarding the petition.

(ii) If the Court of Appeals determines that the petition contains sufficient signatures, the Oneida Business Committee's determination shall be overturned and the petition shall be returned to the Oneida Business Committee for processing as an accepted petition, in accordance with (b).

(2) *Unconstitutional Action.* The Oneida Business Committee shall reject all petitions that request the General Tribal Council to take action in violation of the Constitution.

(A) At any time, the Oneida Business Committee may forward a petition to the Oneida Law Office for a legal opinion to determine whether the petition is seeking action that would violate the Constitution.

(B) Within thirty (30) days after rejecting a petition for seeking unconstitutional action; the Secretary's Office shall send written notice to the petitioner, identifying that his or her petition was rejected because it was requesting action that would violate the Constitution. The notice shall also identify how the petitioner may petition for a declaratory judgment from the Judiciary regarding this determination.

(C) Within thirty (30) days after receiving notice, the petitioner may petition for a declaratory judgment from the Judiciary to determine whether the petition seeks action that violates the Constitution. The Trial Court of the Judiciary shall render a declaratory judgment after reviewing the petition and supporting evidence to determine whether the petition seeks action that would violate any provision of the Constitution.

(i) If the Trial Court of the Judiciary issues a declaratory judgment finding that the petition seeks action that violates the Constitution, the Trial Court shall declare the petition invalid, and no further action shall be taken by the Oneida Business Committee or the General Tribal Council.

(ii) If the Trial Court of the Judiciary issues a declaratory judgment finding that the petition does not seek action that violates the Constitution, the Oneida Business Committee shall accept the petition and proceed with processing the petition as an accepted petition.

(D) At each annual and semi-annual General Tribal Council meeting, the Secretary shall provide a report on all petitions that the Oneida Business Committee rejected as unconstitutional during the previous six (6) month period. At a minimum, the report shall identify the following for each petition rejected as unconstitutional:

(i) the name of the petitioner;

(ii) the title of the petition;

(iii) any actions taken on the petition; including but not limited to:

(a) formal withdrawal of the petition by the petitioner;

(b) whether the Oneida Business Committee's rejection was appealed to the Judiciary; and if so, then

(c) whether the Judiciary's declaratory judgment upheld or overturned the decision of the Oneida Business Committee.

(b) *Accepted Petition.* After accepting a petition:

(1) The Oneida Business Committee shall request that the petition analyses be prepared by the appropriate entity. Unless the Oneida Business Committee directs otherwise, a deadline of sixty (60) days shall be set for each petition analysis. The Oneida Business Committee may provide extensions for good cause.

(a) Each entity that is required to prepare a petition analysis shall provide the Oneida Business Committee with a forty-five (45)-day update on the status of the analysis, unless the Oneida Business Committee identifies a different deadline for this status update.

(2) The Business Committee Support Office shall place the accepted petition on the Oneida Nation's website.

#### 118.5-8. *Meetings with Petitioner.*

(a) *Optional Meeting.* At any time, the Oneida Business Committee may request an optional meeting with the petitioner to determine whether alternative solutions could be provided, to seek clarification of the petition, and/or to discuss other matters which could resolve the petitioner's meeting request.

(b) *Required Meeting.* After the deadline for submitting any required petition analyses has passed, but before the petition is placed on the agenda for an upcoming General Tribal Council meeting; the Oneida Business Committee or designee shall meet with the petitioner to determine if solutions can be provided without scheduling a General Tribal Council meeting.

#### 118.5-9. *Placing a Petition on a General Tribal Council Meeting Agenda.*

(a) After the required meeting with the petitioner, the Oneida Business Committee shall determine the meeting date when a petition will be considered.

(1) A petition shall be placed on an upcoming special meeting agenda within a reasonable time given the circumstances. When determining the placement of petitions on upcoming special meeting agendas, the Oneida Business Committee may consider any factors that may be relevant; including but not limited to, the desirability of placing similar or related petitions on the same agenda so the petitions can all be considered at the same meeting.

(b) No more than five (5) petitions shall be placed on the agenda for any General Tribal Council meeting.

(c) A petition shall be considered by the General Tribal Council no later than six (6) months after it is submitted to the Business Committee Support Office. Provided that, upon written request of the petitioner or upon its own motion; the Oneida Business Committee may toll this six (6) month deadline; in order to work with the petitioner to obtain clarification, address problems, and/or look for alternative solutions that may eliminate the need for the petition to be presented to the General Tribal Council.

(1) After a petitioner submits a written request to toll the six (6) month deadline, the Secretary's Office shall place the request on the agenda for the next available Oneida Business Committee meeting, where the Oneida Business Committee shall approve or deny the request.

(d) In any situation where the Oneida Business Committee tolls the six (6) month deadline identified in (c); the petitioner shall be notified within a reasonable period of time. Such notice shall identify the specific length of time for which the six (6) month deadline is tolled; and the specific date upon which the calculation of the six (6) month period shall resume.

118.5-10. *Incomplete Petition Analyses.* In the event that the required petition analyses are not completed in time for the General Tribal Council meeting the Secretary's Office shall:

(a) notify the petitioner and place the petition, any completed petition analyses and the reasons for the incomplete petition analyses on the scheduled special General Tribal Council meeting agenda.

(b) place the petition and the required completed petition analyses on the subsequent special General Tribal Council meeting agenda.

118.5-11. *Notification to the Petitioner.* The Business Committee Support Office shall provide the petitioner with the following information as soon as it becomes available:

(a) the meeting date when the petition will be considered;

(b) the date the required petition analyses are due to the Business Committee Support Office;

(c) any petition analyses that are submitted to the Business Committee Support Office; and

(d) the deadline date for the petitioner to submit any special meeting packet and/or presentation materials.

118.5-12. *Special Meeting Packet and Presentation Materials.*

(a) *Petitioner Presentations.*

(1) A petitioner shall have the opportunity to present his or her petition request before the General Tribal Council. A petitioner may appoint a designee to present with thirty (30) days' notice provided to the Business Committee Support Office.

(A) If neither the petitioner nor a designee is available to present a petition at the special General Tribal Council meeting where the petition is on the agenda, then the petition may not be deferred, tabled or re-scheduled for

another meeting. The General Tribal Council may either:

(i) elect to discuss and/or act upon the petition based upon any available information, or

(ii) take no action on the petition. If the General Tribal Council takes no action on a petition at a meeting where the petition was on the agenda; the petition shall be dismissed and may not be re-presented to General Tribal Council.

(b) *Meeting Packet Materials*. A petitioner may include pages of his or her own information in the General Tribal Council meeting packet where his or her petition is scheduled to be heard, as long as the information does not contain prohibited content in accordance with section 118.5-12(d). The Secretary shall have discretion to limit the number of pages that will be included based on production and printing standards.

(c) *Presentation Materials*. Each petitioner may prepare presentation materials to supplement the presentation of his or her petition to the General Tribal Council. Presentation materials shall be related to or germane to, the materials submitted by the petitioner for inclusion in the meeting packet. The petitioner or designee shall have access to the same media presentation formats that are available to other presenters.

(1) Presentation materials shall be submitted to the Business Committee Support Office no less than five (5) business days prior to the General Tribal Council meeting at which the petition is scheduled to be discussed.

(d) *Prohibited Content*. Meeting packet materials and presentation materials submitted by a petitioner shall not contain the following:

(1) Personal attacks.

(2) Libelous or potentially libelous statements, or any other defamatory content.

(3) Personally identifiable information or other content that is overly invasive of personal privacy, including information that could be used to track, contact or impersonate another individual.

(4) Disrespectful comments regarding individuals, religion, gender, age, mental or physical ability, ethnicity, race, culture, lifestyle choices or any other personal classification.

(5) Information that is false, misleading or fraudulent.

(6) Any other content that in any way fails to meet the intended purposes of this law, or that is otherwise not in the best interest of the Nation.

(e) Except as otherwise provided in 118.5-12(e)(1); the Business Committee Support Office shall not make any revisions to packet or presentation materials submitted by a petitioner. If the Secretary's Office determines that submitted materials contain prohibited content; the Business Committee Support Office shall attempt to contact the petitioner to explain which content is prohibited; and to ask the petitioner to re-submit materials that do not contain prohibited content.

(1) If the Business Committee Support Office is unable to contact the petitioner or if the petitioner does not re-submit acceptable content in a timely manner; the Business Committee Support Office shall forward the materials to the Oneida Law Office and request a legal opinion on how to proceed. Options may include, but are not limited to, redacting specific language, and/or rejecting the submitted materials entirely. Based upon the legal opinion, the Secretary's Office shall redact, reject, or implement other changes to the submitted content, and shall provide the petitioner a copy of the legal opinion and a description of any changes

made, and/or of any content that is rejected, if applicable.

#### **118.6. Special General Tribal Council Meetings Called by the Chairperson**

118.6-1. If the Chairperson calls a special General Tribal Council meeting in accordance with Art. III, section 6 of the Constitution, the Secretary's Office shall:

(a) place the item on the next available Oneida Business Committee agenda for review.

The Oneida Business Committee shall:

(1) approve the meeting date when the item will be considered by the General Tribal Council; and

(2) direct the appropriate parties to prepare any analyses that the Oneida Business Committee deems appropriate; including deadlines for submitting such analyses.

#### **118.7. Holding a General Tribal Council Meeting**

118.7-1. *Notice.* Notice of a General Tribal Council meeting shall be provided in accordance with the Oneida General Tribal Council Ten Day Notice Policy.

118.7-2. *Quorum.* The quorum for a General Tribal Council meeting shall be established by the Constitution.

118.7-3. *Eligibility to Attend a General Tribal Council Meeting.*

(a) The following individuals are eligible to attend a General Tribal Council meeting:

(1) Tribal members eligible to vote per the Constitution.

(2) Other individuals who attend the meeting for official purposes and are approved to attend the meeting by majority vote of the General Tribal Council. The General Tribal Council shall approve the individual to attend either all or a certain part(s) of the meeting.

(b) Minor children may not attend a General Tribal Council meeting.

118.7-4. *Registration, Verifying Eligibility to Attend a General Tribal Council Meeting.* All individuals who are eligible to attend a General Tribal Council meeting in accordance with section 118.7-3(a)(1) shall register with the Trust Enrollment Department, and present an Oneida Nation identification card or state-issued identification card to verify their identity.

118.7-5. *Canceling a Meeting.*

(a) The Oneida Business Committee may cancel a meeting if:

(1) Neither the Chairperson, nor the Vice-Chairperson of the Nation, can be present due to circumstances beyond their control, or

(2) Holding the meeting would endanger those individuals who attend the meeting, due to circumstances that cannot be controlled, including but not limited to, inclement weather or public health dangers.

(3) There are no agenda items to discuss or there are so few items on the agenda that it would be fiscally irresponsible to hold the meeting. Provided that, this shall not apply to a meeting called by the Chairperson in accordance with section 118.6.

(b) General Tribal Council meetings shall not be cancelled less than twenty-four (24) hours in advance of the meeting start time, unless, for good cause, such notice is impossible or impractical, in which case shorter notice may be given. Notice of a meeting cancellation shall be provided through any practicable media outlet, including, but not limited to, newspapers, internet, mail, radio and television.

118.7-6. *Rescheduling a Meeting.*

(a) When a regular or budget General Tribal Council meeting is canceled, the Oneida

Business Committee shall re-schedule the meeting as soon as practicable.

(b) When a special General Tribal Council meeting is canceled, the Oneida Business Committee shall either:

(1) re-schedule the meeting as soon as practicable; or

(2) place the agenda items from the meeting on the agenda for the next available General Tribal Council meeting, as determined by the Secretary.

#### **118.8. General Tribal Council Meeting Agenda**

118.8-1. The Secretary's Office shall develop a process to address General Tribal Council meeting agenda development. The order of the agenda for each General Tribal Council meeting shall be as follows, provided that, when there is no business in a listed category, it shall be noted on the agenda:

(a) Opening

(b) Call to Order

(c) Adoption of the Agenda

(d) Approval of Minutes

(e) Unfinished Business

(f) Tabled Business

(g) New Business

(h) Reports

(i) Other

(j) Adjourn

118.8-2. *Announcements.* The Chairperson may allow time, prior to the opening, for announcements to be made which do not directly relate to the agenda, provided the announcements last no more than fifteen (15) minutes and do not delay the start of the meeting.

118.8-3. *Call to Order.* The Chairperson shall call General Tribal Council meetings to order at the noticed meeting time or upon confirmation of a quorum, whichever occurs later. Provided that, if a quorum has not been established within fifteen (15) minutes after the noticed meeting time, the meeting shall not be held.

118.8-4. *Adoption of the Agenda.* Amendments to the agenda may be made before the agenda is adopted.

118.8-5. *Unfinished Business, Tabled Business and New Business.* Each item under Unfinished Business, Tabled Business, and New Business shall be presented in the following order:

(a) *Summary.* Summary of the item being presented.

(1) Should be no longer than five (5) minutes in length.

(2) Shall include the purpose of the request and the action requested of the General Tribal Council.

(b) *Presentation.* A presentation of the item, including, at a minimum, pertinent information related to the legal, fiscal, administrative and/or legislative impacts of the item, if any. Presentations shall be limited to no more than twenty (20) minutes.

(c) *Question-and-answer period.* At the start of a General Tribal Council meeting, the General Tribal Council may determine if a time limit is necessary and if so, identify the time limit. Whenever a time limit is established, a member will have up to the allotted time to ask questions or make a statement concerning the topic at hand. Once that time expires or the General Tribal Council member yields the floor, that General Tribal Council member must wait until all other members have had an opportunity to speak before making additional comments.

(d) *Action*. General Tribal Council action and laws of the Nation shall be binding on the Oneida Business Committee and on entities.

118.8-6. *Reports*. All reports shall conform to the format and contain information as required by the Oneida Business Committee.

(a) Each entity and Tribally-chartered corporation shall file an Annual and Semi-Annual Report with the Business Committee Support Office to be made available to Tribal members, either electronically or through inclusion in the meeting materials provided to Tribal members.

(b) The Secretary's Office shall develop standard operating procedures to ensure that the following mandatory reports are included in each General Tribal Council meeting packet:

- (1) meeting scheduling;
- (2) minutes (if available);
- (3) the petition process; and
- (4) costs of each meeting.

118.8-7. *Adjourn*. Items not completed by the adjournment of an annual or semi-annual meeting shall be deferred to the next annual or semi-annual meeting. Items not completed by the adjournment of a budget meeting shall be deferred to a new budget meeting. Items not completed by the adjournment of a special meeting shall be put to the General Tribal Council on whether to defer or table the item to a subsequent special meeting, or dismiss it.

## **118.9. Additional Responsibilities**

118.9-1. *Sergeant-at-Arms*. The Oneida Business Committee shall designate an individual to serve as the Sergeant-at-Arms at General Tribal Council meetings. The Sergeant-at-Arms shall oversee the Internal Security Department during General Tribal Council meetings.

118.9-2. *General Tribal Council Meeting Attendees*. The following requirements shall apply to all persons in attendance at a General Tribal Council meeting; including but not limited to, the Oneida Business Committee, other Tribal officials, and any persons performing job responsibilities related to the meeting,

(a) *Kalihwi-yó and general conduct*. Meeting attendees are expected to keep in line with the Oneida core value of Kalihwi-yó; treating each other with respect and kindness.

(1) Meeting attendees shall not:

- (A) Use profanity, interrupt others, heckle or threaten people, disrespect property or exhibit behavior that disrupts the meeting or endangers the safety of other attendees.
- (B) Be under the influence of alcohol or illegal drugs.
- (C) Have a weapon on their person in violation of any applicable law.
- (D) Take action that violates Tribal law.
- (E) Make defamatory statements about others, including but not limited to, slanderous statements.

(b) *Classified and Sensitive Information*. General Tribal Council meetings are a forum where the governing body of the Nation gathers to discuss matters related to the Nation, including policymaking, internal governance and business strategy. Information provided and shared at General Tribal Council meetings is considered sensitive; and should be treated as classified, in order to minimize the risk of external influence or involvement in Oneida matters. In furtherance of this objective, the following shall apply:

- (1) No person shall make or disseminate any audio or video recording of any General Tribal Council meeting, or of any portion of a General Tribal Council



meeting, without obtaining authorization in advance.

(2) General Tribal Council meeting materials, including but not limited to, meeting packets and minutes, shall not be disseminated to any person who would not have been eligible to attend the meeting at which the materials were or will be provided; without obtaining authorization in advance.

(3) Authorization to make audio or video recordings or to disseminate meeting materials may be provided by the Oneida Business Committee or by majority vote of General Tribal Council.

(A) The Oneida Business Committee may establish a standard operating procedure that allows for non-Tribal employees of the Nation to access General Tribal Council meeting materials as may be necessary for performing their job duties.

(c) *Enforcement.*

(1) The Oneida Law Office is hereby delegated broad authority to act on behalf of the Nation in taking any appropriate legal action to:

(A) Prevent or halt the publication of General Tribal Council meeting materials or unauthorized audio or video recordings; or

(B) Ascertain the identity of the person(s) who disseminated the General Tribal Council meeting materials or unauthorized recordings.

(2) Any individual who violates these general conduct requirements or who is found to be making an audio or video recording of a General Tribal Council meeting, may be prohibited from attending the meeting or may be removed from the meeting.

(A) The Sergeant-at-Arms or designee shall be responsible for enforcing this provision, upon discovery of a violation or at the direction of the Chairperson of the meeting.

(B) An individual removed from a General Tribal Council meeting shall not be allowed to return for the duration of the meeting and shall forfeit any meeting stipend for which he or she would have been eligible, in accordance with the General Tribal Council Meeting Stipend Payment Policy.

(3) Any enrolled member of the Nation who disseminates General Tribal Council meeting materials to unauthorized persons, or who disseminates unauthorized audio or video recordings of a General Tribal Council meeting, may be subject to penalties in accordance with the following:

(A) *Penalties.* The Oneida Business Committee may impose either or both of the following penalties, depending on the severity of the violation:

(i) a fine, of no less than one hundred dollars (\$100) but no greater than two thousand dollars (\$2,000) for each separate act of unauthorized dissemination; and/or

(iv) restitution, for any monetary losses suffered by the Nation or its entities; or by Tribally-chartered corporations; where such monetary losses can be reasonably calculated and are a direct result of the unauthorized dissemination.

(B) *Process.* The Oneida Law Office, acting on behalf of the Nation; is delegated the responsibility to bring actions before the Judiciary when there is a violation of this section. The Trial Court of the Judiciary shall

conduct a hearing, and if the Trial Court determines there has been a violation, shall impose the appropriate penalty. The Trial Court's decision may be appealed in accordance with the applicable rules of procedure.

118.9-3. *Secretary's Office.* The Secretary's Office shall be responsible for:

(a) Scheduling and organizing General Tribal Council meetings. The Secretary's Office shall:

(1) create and approve standard operating procedures to determine specific roles and responsibilities to carry out and enforce this law, and

(2) create rules regarding those entities which assist with the General Tribal Council meetings.

(b) Ensuring each General Tribal Council meeting is recorded and making audio recordings available to Tribal members within five (5) business days after a General Tribal Council meeting.

(c) Creating an action report, transcript and draft minutes of the General Tribal Council meeting.

(1) The action report shall be available in accordance with the Open Records and Open Meetings law within five (5) business days after a General Tribal Council meeting and shall contain a summary of action taken by the General Tribal Council.

(2) The transcript and draft minutes shall be available in accordance with the Open Records and Open Meetings law within sixty (60) days after a General Tribal Council meeting. The draft minutes shall contain, at a minimum:

(A) The start and end times of the meeting;

(B) A quorum count from the meeting;

(C) Action taken by the General Tribal Council;

(D) Signature of the person submitting the minutes for approval; and

(E) Transcribed verbatim minutes.

(d) Placing draft minutes from previous General Tribal Council meetings on the agenda for approval.

(e) Placing General Tribal Council actions which require follow-up before the Oneida Business Committee within thirty (30) days after the General Tribal Council meeting.

(f) Ensuring that all printed meeting materials, including but not limited to, meeting minutes and packet materials; include a statement of notice identifying that meeting materials shall not be shared with, or distributed to, any person who is not a Tribal member.

#### **118.10. Administrative Hearing Bodies**

118.10-1. No administrative hearing body, including a board, committee or commission, is authorized to hear any actions arising under this law.

*End.*

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Adopted – GTC#



## Legislative Operating Committee June 7, 2017

# Sanctions and Penalties Law

<b>Submission Date:</b> 10/15/14	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> Brandon Stevens	<b>Emergency Enacted:</b> n/a

**Summary:** *This item is a proposal for a consistent process that would provide for members of the Oneida Business Committee and other Boards, Committees and Commissions to face sanctions for misconduct. Currently, the only penalty that OBC members may be subject to, is removal from office – meaning that less serious misconduct would either go unpunished or would result in a penalty that might be considered too extreme for a particular violation.*

**10/15/14 LOC:** Motion by Tehassi Hill to add the OBC Sanctions Policy to the Active Files List; seconded by Jennifer Webster. Motion carried unanimously.

*Note: Brandon Stevens will be the sponsor for this item.*

**11/5/14 LOC:** Motion by Jennifer Webster to forward the BC Sanctions and Penalties to an LOC work meeting, with invitations to be sent to the rest of the Oneida Business Committee; seconded by Fawn Billie. Motion carried unanimously.

**1/15/15:** *Work meeting held.* Attendees include: Candice Skenandore, Danelle Wilson, Tani Thurner, Fawn Billie, Fawn Cottrell, Jennifer Webster, RC Metoxen, Brandon Stevens, Tehassi Hill, Jacob Metoxen, Melinda Danforth.

**10/19/16:** *Quarterly Sponsor Update Meeting.* Present: Brandon Stevens, Jennifer Falck, Clorissa Santiago, Maureen Perkins, and Tani Thurner. Tehassi wants to meet with LOC Chair to discuss how this item relates to the Code of Ethics. That meeting is scheduled for 11/10/16.

**11/10/16:** *Work Meeting held.* Present: Tehassi Hill, Tani Thurner, Clorissa Santiago, Brandon Stevens, Jennifer Falck. Group agreed that we need a work meeting to discuss; Sanctions & Penalties, Comprehensive Policy, Removal Law(s), and Code of Ethics.

**11/29/16:** *Work Meeting held.* Present: Fawn Billie, Brandon Stevens, Clorissa Santiago, Tehassi Hill, Tani Thurner, Jenny Webster, David Jordan, Jo Anne House, Candice Skenandore, Lisa Liggins, Jen Falck. Meeting was facilitated by Jessica Wallenfang. This was a facilitated meeting designed to discuss; Sanctions & Penalties, Removal, Code of Ethics, and Comprehensive Policy simultaneously. The group reviewed each law or draft for similarities, and discussed shared elements. The group asked that 1) the LRO complete that work, 2) then check with Jenny Webster as the sponsor of Comprehensive Policy, and 3) schedule another work meeting.

**2/15/17 LOC:** Motion by Jennifer Webster to upgrade the Domestic Animals Ordinance Amendments, the Children's Code, Code of Ethics Amendments, and the Sanctions and Penalties Law from medium priority to high priority; seconded by Tehassi Hill. Motion carried unanimously.

**2/17/17:** *Work meeting held.* Attendees include Fawn Billie, Jennifer Falck, Leyene Orosco, Brandon Stevens, Tani Thurner, Jennifer Webster, Tehassi Hill, Candice Skenandore, Cathy Bachhuber

**5/2/17:** *Work meeting held.* Attendees include Fawn Billie, Jennifer Falck, Brandon Stevens, Tani Thurner, Jennifer Webster, Tehassi Hill, David P. Jordan, Danelle Wilson, Jo Anne House

**5/5/17:** *Work meeting held.* Attendees include Jennifer Webster, Jennifer Falck, and Tani Thurner.

**Next Steps:**

- Approve the Sanctions and Penalties draft and forward to the Legislative Reference Office for a legislative analysis.

**Title 1. Government and Finances - Chapter 120**  
**SANCTIONS AND PENALTIES FOR ELECTED AND APPOINTED OFFICIALS**

120.1. Purpose and Policy	120.7. Sanctions and Penalties – Oneida Business Committee Members
120.2. Adoption, Amendment, Repeal	120.8. Sanctions and Penalties – All Other Elected Officials
120.3. Definitions	120.9. Sanctions and Penalties – Appointed Officials
120.4. General	120.10. Recordkeeping and Reporting
120.5. Misconduct.	
120.6. Sanctions and Penalties That May Be Imposed Upon Officials For Misconduct	

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**120.1. Purpose and Policy**

120.1-1. *Purpose.* The purpose of this law is to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties.

120.1-2. *Policy.* It is the policy of the Nation to ensure that elected and appointed officials who commit misconduct while in office be subject to appropriate sanctions and penalties; and to ensure that there is a fair process in place that enables officials to fairly respond to allegations of misconduct.

**120.2. Adoption, Amendment, Repeal**

120.2-1. This law was adopted by the Oneida Business Committee by resolution \_\_\_\_\_.

120.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

120.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

120.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**120.3. Definitions**

120.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Constitution” means the Oneida nation Constitution.

(b) “Entity” means a board, committee or commission of the Nation.

(c) “Expulsion” means the removal of an elected official from office for specific egregious forms of misconduct.

(d) “Judiciary” means the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B to administer the judicial authorities and responsibilities of the Nation.

(e) “Member” means a member of a board, committee or commission.

(f) “Misconduct” means wrongful, improper or unlawful conduct or behavior.

(g) “Nation” means the Oneida Nation.

(h) “Official” means any person who is elected or appointed to serve on a board, committee or commission of the Nation, including the Oneida Business Committee. For the purposes of this law, judges of the Judiciary are not considered officials; as those

judges are subject to sanctions and penalties in accordance with the process established in the Judiciary law.

(i) “Oneida Business Committee Support Office” means the office that provides administrative support for the Oneida Business Committee and various other governmental operations.

#### **120.4. General**

120.4-1. Sanctions and penalties may be imposed upon the Nation’s officials for misconduct in office, in accordance with this law.

(a) Individual entities may identify and establish, in their bylaws, additional sanctions and penalties for misconduct. Provided that, any additional sanctions and penalties established through an entity’s bylaws may be stricter than, but shall not be less strict, than any sanctions and penalties identified herein.

(b) The imposition of sanctions and/or penalties in accordance with this law does not exempt an official from individual liability for the underlying misconduct, and does not limit any penalties that may be imposed in accordance with other applicable laws. In addition to any sanctions and penalties that may be imposed in accordance with this law, officials who commit misconduct in office may be subject to other consequences; including but not limited to:

- (1) removal, if elected, as identified in the Removal law;
- (2) termination of appointment, if appointed;
- (3) criminal prosecution, for misconduct that also violates applicable criminal law;
- (4) civil liability, in accordance with the applicable law of any jurisdiction; and/or
- (5) penalties for specific misconduct as authorized by any other law of the Nation
- (6) if applicable, and to the extent permitted by law or individual insurance policies, an official may lose the right to defense and indemnification by the Nation.

120.4-2. *Retaliation Prohibited.* Retaliation against any complainant or party or witness to a complaint is prohibited. This protection shall also be afforded to any person offering testimony or evidence or complying with directives authorized under this law. Retaliation shall include any form of adverse or punitive action by or caused by, any official.

120.4-3. Any official who is the subject of a complaint has the right to be represented by an attorney or advocate, at his or her own expense, for any actions or proceedings related to the complaint.

#### **120.5. Misconduct**

120.5-1. An official shall be subject to sanctions and penalties for the following forms of misconduct:

(a) *Malfeasance.* Illegal or dishonest activity committed by an official that could undermine the public’s confidence and trust in the official, the Nation, and/or the entity upon which the official serves. Malfeasance can occur regardless of whether there is a criminal conviction for the misconduct. Malfeasance includes, but is not limited to:

- (1) Political corruption – cronyism or nepotism (*i.e.* affording special treatment or preference to friends, colleagues, or relatives); bribery, extortion, or election tampering.

- 84 (2) Theft – embezzlement, misappropriation or misuse of the Nation’s funds,  
85 fraudulent or other deceptive activity.
- 86 (3) Misuse of power – sharing confidential information, influence trading, using  
87 one’s official position for personal benefit or for the benefit of family or friends.
- 88 (4) Inappropriate public behavior that reflects negatively upon the official, the  
89 Nation, and/or the entity, including but not limited to:
- 90 (A) intoxication caused by alcohol while representing the Nation,  
91 (B) use of illegal drugs at any time  
92 (C) harassment of another person, including harassment by making  
93 unsubstantiated defamatory allegations, or by filing frivolous complaints.
- 94 (5) Violation of the Constitution or any of the Nation’s laws or policies, including  
95 but not limited to, the Code of Ethics and the Conflict of Interest law.
- 96 (6) Violation of the bylaws, duly adopted rules, standard operating procedures or  
97 other internal operating documents that govern the entity upon which the official  
98 serves, including but not limited to, any policy governing communications with  
99 the media.
- 100 (7) Any violation of the oath of office.
- 101 (8) Entering into any business transaction which places the official’s self-interest  
102 in conflict with the best interests of the Nation or of the entity upon which the  
103 official serves.
- 104 (9) Unpaid and overdue fines and other debts owed to the Nation, including but  
105 not limited to, ordered restitution and money judgments.
- 106 (b) *Nonfeasance*. Intentionally and/or repeatedly not performing the required duties of  
107 office, gross ignorance of official duties, or gross carelessness in the discharge of those  
108 duties; including but not limited to:
- 109 (1) Failing to regularly attend meetings, training sessions, or other activities as  
110 required by the entity.
- 111 (2) Failing to perform the duties of office, including but not limited to, submitting  
112 any reports as required by law or Oneida Business Committee or General Tribal  
113 Council directive.
- 114 (3) Failing to satisfy any training, experience and/or continuing education  
115 requirements that are necessary to serve on an entity, as identified in the bylaws  
116 of the entity.
- 117 (4) Failure to give bond, when the official is required by law to do so; including  
118 failing to execute the bond within the time required by law, or failing to give a  
119 new bond, or an additional bond or security, if required by law to do so.
- 120 (c) *Serious Crimes*. Formally being charged and/or convicted of specific crimes during  
121 the current term of office, including:
- 122 (1) Any felony, or any crime in any jurisdiction that would be classified as a  
123 felony under federal law or Wisconsin law.
- 124 (2) Any misdemeanor that resulted from conduct inconsistent with the standards  
125 of public office, including but not limited to:
- 126 (A) making threats or intentionally causing harm or damage to another  
127 person, animal, or to property belonging to another;
- 128 (B) harassment, stalking, coercion, or any other activity which  
129 demonstrates a disregard for the safety, peace of mind, or well-being of  
130 others;

- (C) any criminal activity that reflects dishonesty;
- (D) obstruction of justice; and/or
- (E) the sale or possession of controlled substances.

(d) *Action or inaction incompatible with high standards of integrity.* Any other activity that demonstrates contempt or disdain for the entity to which the official was elected to serve, the Nation's government, or the Nation; or which is incompatible with the high standards of integrity that are expected of the Nation's officials.

120.5-2. *Statute of Limitations.* No complaint filed under this law may be considered if the misconduct did not occur within the previous three (3) years; or within the official's current term of office; whichever is shorter.

## **120.6. Sanctions and Penalties That May Be Imposed On Officials for Misconduct**

120.6-1. *Specific Sanctions and Penalties.* When the entity has determined that one of its officials has committed misconduct, the entity shall establish or recommend, in each case, the appropriate sanction and, when applicable, length of time each sanction shall continue. An entity may impose any of the following sanctions and/or penalties; as may be appropriate:

(a) *Verbal Reprimand.* A verbal reprimand may be imposed with or without suspension of any or all other sanctions and/or penalties provided herein. When a verbal reprimand is issued, the entity upon which the official serves shall impose the verbal reprimand by reading a prepared statement during a regular or special meeting. The verbal reprimand shall identify:

- (1) The entity's findings regarding the specific actions or inaction taken by the official that were found to be misconduct;
- (2) The reasons why the official's actions or inactions amounted to misconduct;
- (3) A statement identifying that the misconduct violates the high standards of behavior expected of the Nation's officials and is not acceptable; and
- (4) A direction to the official to refrain from engaging in future misconduct.

(b) *Public Censure.* Public censure may be imposed alone, or in conjunction with any other sanctions and penalties provided herein. When an entity imposes public censure as a sanction or penalty; the entity shall prepare a resolution, which shall identify all of the information required to be included in a verbal reprimand, and shall also identify any other sanctions or penalties that shall be imposed in conjunction with the public censure.

(1) The public censure resolution shall be adopted by the entity, and then presented to the Oneida Business Committee at a regularly scheduled Oneida Business Committee meeting. If accepted by the Oneida Business Committee, the Nation's Secretary shall read the resolution from the floor of the Oneida Business Committee meeting, and then submit the resolution for publication in two (2) consecutive issues of the Kalihwisaks.

(2) *Public Apology.* Upon request, the Oneida Business Committee may permit an official to issue a public apology before the Oneida Business Committee considers adopting a public censure resolution regarding that official. After an official issues a public apology that meets the requirements of this section, the Oneida Business Committee may accept the public apology in addition to, or instead of, accepting the public censure resolution.

(A) The official shall read the public apology from the microphone at the Oneida Business Committee meeting, and shall provide a written copy to



the Nation's Secretary, who shall submit the letter for publication in two consecutive issues of the Kalihwisaks.

(B) The public apology shall be written by the official as a letter addressed to the Nation, and shall:

- (i) identify the specific misconduct committed by the official;
- (ii) recognize that the official's actions or actions were wrong;
- (iii) identify the effects of the official's misconduct – i.e. identifying any parties who were, or are likely to be, harmed as a result of that misconduct;
- (iv) include a clear and unambiguous apology from the official; and
- (v) include any other information as directed by the entity.

(C) If the Oneida Business Committee accepts a public apology in lieu of the public censure:

- (i) the resolution shall be withdrawn from the Oneida Business Committee meeting agenda; and
- (ii) the Secretary's Office shall notify the entity that the Oneida Business Committee has accepted the public apology in lieu of the public censure; and
- (iii) the entity shall repeal the resolution. Provided that; any penalties imposed in conjunction with the public censure shall still be carried out.

(c) *Suspension.* An official who is found guilty of misconduct may be suspended from performing his or her duties as an official for one (1) consecutive period of time, not to exceed thirty (30) days.

(1) During a suspension, the official may not:

- (A) attend meetings, trainings or any other events as part of the entity;
- (B) attend conferences or other events on behalf of, or as a representative of, the entity;
- (C) vote or participate in any activities of the entity;
- (D) perform work on behalf of the entity.

(2) When an entity suspends one of its officials, the entity shall submit written notice to both the official and to the Tribal Secretary's office of:

- (A) the specific start and end date of the suspension;
- (B) the specific activities that the official is prohibited from doing during the suspension; and
- (C) that the official shall not be eligible for any compensation, including regular pay, stipends, or mileage reimbursement, during the suspension.

(d) *Monetary Penalties.* An entity may impose a fine upon an official; not to exceed five hundred dollars (\$500) per act of misconduct.

(1) Money received from fines shall be deposited into the General Fund.

(2) Fines shall be paid within ninety (90) days after the order is issued or upheld on final appeal, whichever is later. If the fine is not paid by this deadline, the entity may seek to collect the money owed through the Nation's garnishment and/or per capita attachment process.

(3) Community service may be substituted for part or all of any fine at the rate of ten dollars (\$10) for each hour of community service.

(e) *Restitution*. An official may be ordered to pay restitution, which may include the repayment of any improperly-received benefit, or any other payment which is intended to make another whole after suffering losses as a result of the official's misconduct.

(f) *Termination of Appointment or Removal from Office*.

(1) When an entity finds that termination of appointment is an appropriate sanction for an appointed official's misconduct, the entity shall submit a written request to the Oneida Business Committee, seeking to have the official's appointment terminated.

(2) When an entity finds that removal is an appropriate sanction for misconduct, the entity shall commence the removal process in accordance with the Removal law.

(3) For certain egregious forms of misconduct, an entity may expel an elected official in accordance with 120.8-5.

120.6-2. *Factors in Determining an Appropriate Penalty*. When determining the appropriate sanction or sanctions to impose, the entity may consider all factors it deems relevant, including but not limited to:

(a) the seriousness or severity of the misconduct;

(b) whether the conduct was intentional or not;

(c) the likelihood of repetition;

(d) the extent of probable damage to the finances or reputation of the Nation, the complainant, the entity, or to any other person or organization;

(e) whether the official or his or her family personally profited, financially or otherwise, from the prohibited conduct;

(f) the official's remorse, or

(g) the official's willingness and ability to take steps to mitigate the harm caused by the violation, and

(h) any prior complaints filed, including any previous sanctions and penalties imposed upon the official while serving on the entity or on any other board, committee or commission of the Nation.

120.6-3. In addition to determining penalties, the entity may refer their findings to other appropriate entities for additional investigation, actions or penalties in accordance with other applicable law.

## **120.7. Complaints**

120.7-1. Any person who, in good faith, has knowledge or reason to believe that an official has committed misconduct, may file a written complaint with the appropriate party, as identified in section 120.7-2. The complainant shall attach any supporting documentation to the complaint, and the complaint shall clearly identify:

(a) The name of the official alleged to have committed the misconduct,

(b) The entity or entities upon which the official serves;

(c) The name of the complainant, as well as a telephone number; and an e-mail address if available;

(d) Specific details of the official's misconduct; including but not limited to, the date, time, place, and persons involved or who may have knowledge pertinent to the alleged violation; if known.

(e) Which provision of section 120.5-1 identifies the official's actions or inaction as misconduct;

(f) If applicable, a calculation or estimate of any monetary damages or loss suffered by the complainant, as a result of the official's misconduct.

(g) A sworn statement attesting that the information provided in and with the complaint is true, accurate, and complete to the best of the complainant's knowledge.

**120.7-2. Filing Complaints.**

(a) *Oneida Business Committee members.* Complaints against an Oneida Business Committee member shall be filed with the Oneida Business Committee Support Office. Upon receiving such a complaint, the Oneida Business Committee Support Office shall forward copies of the complaint, including any supporting documentation, to the Oneida Business Committee member who is the subject of the complaint.

(b) *All Other Elected and Appointed Officials.* Complaints filed against all other elected and appointed officials may be filed either with the Oneida Business Committee Support Office or directly with the entity upon which the official serves.

(1) If the complaint is filed with the Oneida Business Committee Support Office, then that office shall promptly forward copies of the complaint, including any supporting documentation, to both the official and to each entity upon which the official serves.

(2) If the complaint is filed with an entity, then the entity shall promptly forward copies of the complaint, including any supporting documentation, to both the official and the Oneida Business Committee Support Office. If the official serves on more than one (1) entity; then the Oneida Business Committee Support Office shall then promptly forward the complaint to any other entities upon which the official serves.

(3) When a complaint is filed against an official who serves on more than one (1) entity; then each entity shall have discretion to independently investigate and impose penalties in accordance with this law.

**120.7-3. Frivolous Complaints.** After review, if the entity upon which an official serves determines that a complaint is frivolous or was brought in bad faith, then that entity may file an action against the complainant with the Judiciary.

(a) If the Judiciary finds by clear and convincing evidence that the complaint was frivolous or brought in bad faith, the Judiciary may order the complainant to pay some or all of the costs incurred by:

(1) the official in responding to the complaint; and/or

(2) the entity in conducting a review of the complaint.

(b) Frivolous complaints and complaints brought in bad faith are misconduct under this law. Any official who is found to have filed a frivolous complaint, or to have brought a complaint in bad faith, may also be subject to penalties for misconduct as identified herein. In addition to any penalties imposed in accordance with (a), a complainant may be subject to civil suit or criminal penalties as authorized by other applicable law; both before the Judiciary and in any other court of competent jurisdiction.

**120.8. Sanctions and Penalties - Oneida Business Committee Members**

**120.8-1.** Upon receiving a complaint filed against an Oneida Business Committee member, the Oneida Business Committee Support Office shall promptly schedule a special Oneida Business Committee meeting for the exclusive purpose of conducting a preliminary review of the complaint.

120.8-2. Within ten (10) days after receiving his or her copy of the complaint, the Oneida Business Committee member who is the subject of the complaint shall submit to the Oneida Business Committee Support Office a written answer setting forth any admission, denial, affirmative defense, or other relevant information upon which the Oneida Business Committee member intends to rely during proceedings related to the complaint.

120.8-3. *Preliminary Review*. The preliminary review shall be conducted within thirty (30) days after the complaint is filed.

(a) No less than five (5) days prior to the preliminary review, the Oneida Business Committee Support Office shall provide copies of the complaint, the answer, and all supporting documentation, to each member of the Oneida Business Committee.

(b) During the preliminary review, all members present shall review the complaint and the written answer; as well as any supporting documentation.

(1) The Oneida Business Committee member who is the subject of the complaint may not participate or vote during the preliminary review; but shall be permitted to be present during the proceeding; and may be permitted to answer questions, provide additional information, and/or to otherwise speak on his or her own behalf.

(2) The entity may request that the complainant attend the preliminary review; and may permit the complainant to answer questions, provide additional information, and/or to otherwise speak on his or her own behalf

(c) After reviewing the complaint, answer and any other relevant information provided, the Oneida Business Committee shall determine, by majority vote, whether the complaint has merit.

(1) Upon finding that a complaint has merit, the Oneida Business Committee shall schedule an investigatory hearing to consider the specific allegations identified in the complaint, in accordance with 120.8-4.

(2) Upon finding that a complaint has no merit, the Oneida Business Committee shall dismiss the complaint; and may initiate a separate inquiry into whether the complaint was frivolous and/or brought in bad faith, in accordance with 120.7-3.

120.8-4. *Investigatory Hearing*. An investigatory hearing shall occur within thirty (30) days after the preliminary hearing has concluded.

(a) When conducting an investigatory hearing, the Oneida Business Committee shall have the broadest grant of authority to compel any person or organization within the Nation to:

(1) appear at the hearing to provide testimony and/or information relevant to the allegations against the official; and/or

(2) produce physical evidence that is relevant to the allegations.

(b) The Oneida Business Committee shall provide an opportunity for the Oneida Business Committee member who is the subject of the complaint to answer the allegations and to provide witness testimony, documents and other evidence on his or her own behalf.

(c) The hearing shall be informal and conducted as the interests of justice so require; and shall be recorded by the Oneida Business Committee support office.

(d) Prior to making a final determination, the Oneida Business Committee shall consider all evidence and information provided, and shall have a full and complete discussion of all aspects of the complaint and answer.

120.8-5. *Determination by the Oneida Business Committee*. After the investigatory hearing has concluded, the Oneida Business Committee shall, by majority vote, determine whether there is

clear and convincing evidence that the Oneida Business Committee member who was the subject of the complaint did engage in misconduct.

(a) If the Oneida Business Committee finds that there is clear and convincing evidence that the Oneida Business Committee member engaged in misconduct, the Oneida Business Committee shall, by majority vote, determine and impose appropriate sanctions and/or penalties, in accordance with 120.6.

(b) If the Oneida Business Committee does not find that there is clear and convincing evidence to support the allegations that the official engaged in misconduct, the complaint shall be dismissed.

(c) Within ten (10) days after the investigatory hearing, the Oneida Business Committee shall issue a written decision and provide copies of the decision to:

(1) the complainant,

(2) the Oneida Business Committee member who is the subject of the complaint, and

(3) the Oneida Business Committee Support Office, for recordkeeping.

**120.8-6. Appeal.** The complainant and the Oneida Business Committee member shall both have the right to appeal the Oneida Business Committee's decision to the Judiciary within twenty (20) days after the written decision is issued. The appeal shall be limited to review of the record, and the Oneida Business Committee's decision may only be overturned if the Judiciary determines that:

(a) The findings or penalties imposed were clearly erroneous, unsupported by the record, or arbitrary and capricious; or

(b) Procedural irregularities occurred which prevented a fair and impartial hearing; or

(c) the Oneida Business Committee member was deprived of due process as authorized by the Constitution and/or the Indian Civil Rights Act.

## **120.9. Sanctions and Penalties - All Other Elected Officials**

**120.9-1.** Upon receiving a complaint filed against any elected official other than a member of the Oneida Business Committee, the entity shall schedule a preliminary review to determine whether the complaint has merit. A preliminary review shall be conducted during either during a regularly scheduled meeting, or during a special meeting of the entity.

**120.9-2.** Within ten (10) days after receiving his or her copy of the complaint, the official who is the subject of the complaint shall submit to the entity's chairperson a written answer setting forth any admission, denial, affirmative defense, or other relevant information upon which the official intends to rely during proceedings related to the complaint.

(a) If the chairperson of the entity is the subject of the complaint or if that officer position is vacant; then the written answer may be filed with the vice chairperson of the entity; or if there is no vice chairperson; then with the secretary of the entity.

**120.9-3. Preliminary Review.** The preliminary review shall be conducted within thirty (30) days after the complaint is filed.

(a) No less than five (5) days prior to the preliminary review, the entity shall provide copies of the complaint, the answer, and all supporting documentation, to each member of the entity.

(b) During the preliminary review, all members present shall review the complaint and the written answer; as well as any supporting documentation.

(1) The elected official who is the subject of the complaint may not participate or vote during the preliminary review; but shall be permitted to be present during the

proceeding; and may be permitted to answer questions, provide additional information, or to otherwise speak on his or her own behalf.

(2) The entity may request that the complainant attend the preliminary review; and may permit the complainant to answer questions, provide additional information, and/or to otherwise speak on his or her own behalf

(c) After reviewing the complaint, answer and any other relevant information provided, the entity shall determine, by majority vote, whether the complaint has merit.

(1) Upon finding that a complaint has merit, the entity shall schedule an investigatory hearing to consider the specific allegations identified in the complaint. The investigatory hearing shall occur within thirty (30) days after the preliminary hearing.

(2) Upon finding that a complaint has no merit, the entity shall dismiss the complaint; and may initiate a separate inquiry into whether the complaint was frivolous and/or brought in bad faith, in accordance with 120.7-3.

120.9-4. *Investigatory Hearing.* An investigatory hearing shall occur within thirty (30) days after the preliminary hearing has concluded.

(a) When conducting an investigatory hearing, the entity upon which the official serves shall have the broadest grant of authority to compel any person or organization within the Nation to:

(1) appear at the hearing to provide testimony and/or information relevant to the allegations against the official; and/or

(2) produce physical evidence that is relevant to the allegations.

(b) The entity upon which the official serves shall provide an opportunity for the entity member who is the subject of the complaint to answer the allegations and to provide witness testimony, documents and other evidence on his or her own behalf.

(c) The hearing shall be informal and conducted as the interests of justice so require; and shall be recorded by the entity's secretary or by a person designated to do so by the entity.

(d) Prior to making a final determination, the entity shall consider all evidence and information provided, and shall have a full and complete discussion of all aspects of the complaint and answer.

120.9-5. *Determination by the Entity.* After the investigatory hearing has concluded, the entity shall, by majority vote, determine whether there is clear and convincing evidence that the entity member who was the subject of the complaint did engage in misconduct.

(a) If the entity finds that there is clear and convincing evidence that the official engaged in misconduct, the entity shall, by majority vote, determine and impose appropriate sanctions and/or penalties, in accordance with 120.6.

(b) If the entity does not find that there is clear and convincing evidence to support the allegations that the official engaged in misconduct, the complaint shall be dismissed.

(c) Within ten (10) days after the investigatory hearing, the entity shall issue a written decision, and provide copies to

(1) the complainant,

(2) the entity member who is the subject of the complaint, and

(3) the Oneida Business Committee Support Office, for recordkeeping.

(d) *Appeal.* The complainant and the Oneida Business Committee member shall both have the right to appeal the entity's decision to the Judiciary within twenty (20) days after

the written decision is issued. The appeal shall be limited to review of the record, and the entity's decision may only be overturned if the Judiciary determines that:

- (a) The findings or penalties imposed were clearly erroneous, unsupported by the record, or arbitrary and capricious; or
- (b) Procedural irregularities occurred which prevented a fair and impartial hearing; or
- (c) the entity member was deprived of due process as authorized by the Constitution and/or the Indian Civil Rights Act.

120.9-6. *Expulsion of Elected Officials.* Although the Oneida Nation recognizes the importance of allowing the membership to elect the officials who represent them; the Oneida Nation also recognizes that certain forms of misconduct pose such a significant threat to the integrity of our government; that expulsion from office is warranted.

(a) *Applicability.* Oneida Business Committee members are not subject to expulsion from office. In accordance with the Constitution, Oneida Business Committee members may only be removed from office in accordance with the Removal law.

(b) *Serious misconduct.* An elected official may be expelled from office for the following serious misconduct, but only when such misconduct occurs or becomes public knowledge after the official is elected, or most recently re-elected, to office:

(1) conviction of any of the following crimes.

(A) any felony; or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law.

(B) a criminal statutory offense which involved corruption or abuse of one's public office, authority or position; including but not limited to; misuse of public funds, bribery, extortion, embezzlement, coercion, trading in influence.

(C) any crime that reflects dishonesty, including but not limited to; fraud, conversion, money laundering, theft, obstruction of justice, perjury,

(D) any crime that involves the distribution, or possession with intent to distribute; of any illegal drug.

(E) any crime involving sexual misconduct.

(2) any activity that demonstrates contempt and disdain for the entity to which the official was elected to serve, the Nation's government, or the Nation; to such an extent that continuing to serve on the entity would undermine the membership's confidence in the Nation or its governing bodies.

(c) *Process.* The process to expel an elected official begins after the investigative hearing is conducted in accordance with 120.9-4. After an entity finds that an official has committed serious misconduct, as identified in (b), and that expulsion from office is an appropriate sanction and/or penalty; then the following process shall apply:

(1) The entity shall formally approve a motion to expel the official, by a two-thirds (2/3) majority vote.

(2) The entity shall forward the following to the Oneida Business Committee:

(A) a record of the entire proceedings, including any documentation and evidence submitted by the complainant and the official;

(B) the entity's findings,

(C) a recommendation for expulsion, including a copy of the meeting minutes showing the entity approved expulsion by a two thirds (2/3) majority vote.

(3) Within thirty (30) days after receiving the recommendation for expulsion, the Oneida Business Committee shall call a special meeting exclusively to consider the official's expulsion.

(A) The Oneida Business Committee shall review the record of the proceedings and the entity's findings.

(B) The official shall be given the opportunity to speak on his or her own behalf, either in person or through counsel, to respond to the entity's findings and recommendation.

(C) The Oneida Business Committee shall deliberate and vote on whether to confirm the expulsion.

(D) If the Oneida Business Committee confirms expulsion by a two-thirds (2/3) majority vote, then the official's seat shall be declared vacant and the Oneida Business Committee shall initiate steps to fill the vacancy in accordance with the entity's bylaws and/or any applicable law of the Nation.

(E) If the Oneida Business Committee is unable to confirm expulsion by a two-thirds (2/3) majority vote, then the official shall retain his or her seat. Provided that, this shall not prevent the entity, or any other person, from seeking removal of the official in accordance with the Removal law.

(F) The Oneida Business Committee's decision to expel an official is final and not subject to appeal.

#### **120.10. Sanctions and Penalties - Appointed Officials**

120.10-1. Within thirty (30) days after a complaint has been filed, the entity shall, at a regular or special meeting; review the complaint, the answer, and any supporting documentation. This review shall be conducted at a regular or special meeting of the entity.

(a) Within ten (10) days after receiving his or her copy of the complaint, the official who is the subject of the complaint shall submit to the entity's chairperson a written answer setting forth any admission, denial, affirmative defense, or other relevant information upon which the official intends to rely during proceedings related to the complaint.

(1) If the chairperson of the entity is the subject of the complaint or if that officer position is vacant; then the written answer may be filed with the vice chairperson of the entity; or if there is no vice chairperson; then with the secretary of the entity.

(b) No less than five (5) days prior to the meeting, the entity shall provide copies of the complaint, the answer, and all supporting documentation, to each member of the entity, including the official who is the subject of the complaint.

(c) The review shall be recorded by the entity's secretary or by another officer designated by the entity to perform that responsibility.

(1) The appointed official who is the subject of the complaint may not participate or vote; but shall be provided an opportunity to answer the allegations and to provide witness testimony, documents and other evidence on his or her own behalf.

(2) The entity may request that the complainant attend the preliminary review; and may permit the complainant to answer questions, provide additional information, and/or to otherwise speak on his or her own behalf



(d) *Entity Findings*. After reviewing the complaint, answer and any other relevant information provided, the entity shall determine, by majority vote, whether the complaint has merit and if so, then whether a preponderance of the evidence shows that the official has committed misconduct.

(1) *Merit*. If the complaint is determined to be without merit, the entity may, by majority vote, dismiss the complaint without further action being taken. Upon dismissing a complaint, the entity may initiate a separate inquiry into whether the complaint was frivolous and/or brought in bad faith, in accordance with 120.7-2.

(2) *Factual Findings*.

(A) If the entity does not find that a preponderance of the evidence shows that the appointed official engaged in misconduct, then the complaint shall be dismissed.

(B) If the entity finds that a preponderance of the evidence shows that the appointed official engaged in misconduct, then the entity shall forward its findings, including a recommendation as to penalties; to the Oneida Business Committee; and shall send a copy of the findings and recommendation to the official.

(i) Within thirty (30) days after receiving the findings and recommendations from the entity, the Oneida Business Committee shall review the submitted materials, and by majority vote, shall either:

- (a) approve and impose the recommended penalties, or
- (b) reject the recommended penalties and impose different penalties, or
- (c) reject the recommended penalties and decline to impose any penalties.

(ii) Within ten (10) days after approving or rejecting the entity's findings and recommendation as to penalties. The Oneida Business Committee Support Office shall notify the official and the complainant of the actions taken by the Oneida Business Committee.

(iii) The Oneida Business Committee's decision is final and not subject to appeal.

(iv) The Oneida Business Committee Support Office shall maintain a record of any final decisions made or actions taken by the Oneida Business Committee; as required by section 120.11-1.

#### **120.11. Effect of Resignation by an Official**

120.11-1. If an official resigns his or her office after a complaint has been filed against him or her, but before the matter is concluded, then the following shall apply:

- (a) the original complaint, answer and any information received through the investigation shall become part of the official's record of office; in accordance with 120.12-1; and
- (b) the official shall be ineligible to serve on any entity for a period of six (6) years.
- (c) If the official resigns after the entity has imposed sanctions or penalties; then the penalties imposed shall still be carried out and shall be identified in the official's record of office.

120.11-2. For the purposes of this section, a matter shall be deemed concluded when either of the following occur; subject to any appeals authorized by law:

- (a) the entity formally determines that the official has not committed misconduct, or
- (b) the entity formally determines that the official has committed misconduct, and any sanctions and penalties imposed by the entity have been fully carried out.

#### **120.12. Recordkeeping and Reporting**

120.12-1. The Oneida Business Committee Support Office shall maintain a record of office for each official, for a period of no less than ten (10) years, starting with the effective date of this law. Provided that, any complaints received or disciplinary actions occurring prior to the effective date of this law are not required to be maintained. The record of office maintained for each official shall include, at a minimum:

- (a) a copy of each complaint filed against the official;
- (b) the outcome of the complaint, and
- (c) any sanctions or penalties imposed upon an official.

120.12-2. *Reporting*. In their regular annual and semi-annual reports to General Tribal Council, each entity shall identify:

- (a) all complaints filed against members of the entity; and
- (b) the outcome of each complaint, including any sanctions or penalties imposed.

*End.*

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Adopted –



Legislative Operating Committee  
June 7, 2017

## Petition: Child Care Department Consumer Complaint Policy

<b>Submission Date:</b> 9/17/14	<b>Public Meeting:</b> 10/31/13, 2/27/14,
<b>LOC Sponsor:</b> Jennifer Webster	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *A petition was submitted to mandate the OBC review, amend and implement a new complaint process for Oneida Child Care. The intent of the petition is to provide the minimum requirements of the new process which include mandatory administrative leave during investigations; investigation timelines, providing explanation of results, and quarterly reporting of all complaints to the Childcare Division Director and OBC.*

*This item was added to the active files list on June 6, 2012. A legislative analysis was presented to GTC on November 19, 2012 and GTC approved the petition, directing the OBC to review, amend and implement a new parent communications and grievances process for the Oneida Childcare Department. Since then a draft was developed and an update was given to GTC on July 1, 2013 as directed. Public meetings were held on October 13, 2013 and February 27, 2014. On April 16, 2014 the sponsor began to develop the Policy through a series of work meetings.*

**9/17/14 LOC:** Motion by Jennifer Webster to add the Child Care Department Consumer Complaint Policy to the Active Files List; seconded by Fawn Billie. Motion carried unanimously.

*Note: Jennifer Webster will be the sponsor for this item.*

**11/18/14:** Work meeting held. Attendees include: Candice Skenandore, Chenoa Webster, Michelle Mays, Dorothy A. Skenandore, Jenny Webster, Rae Skenandore, Donna Christensen, Jacob Metoxen, Bob Keck and Norbert Hill.

**11/24/14:** Work meeting held. Attendees include: Candice Skenandore, Michelle Mays and Stephen Webster.

**12/5/14:** Work meeting held. Attendees include: Candice Skenandore, Michelle Mays, Jennifer Webster, Dorothy Skenandore and Diane Heim-McLester

**12/12/14:** Work meeting held. Attendees include: Richard Cluckey, Stephen Webster and Candice Skenandore

**2/23/15:** Work meeting held. Attendees include: Norbert Hill, Dorothy Skenandore, Jennifer Webster, Bob Keck, Donna Christensen, Jessica Wallenfang, Rae Skenandore, Susan House, Chenoa Webster, Jacob Metoxen

- 3/18/15 LOC:** Motion by Fawn Billie to defer the Child Care Department Consumer Complaint Policy for a legislative analysis and fiscal impact statement; seconded by Tehassi Hill. Motion carried unanimously.
- 6/3/15 LOC:** Motion by Tehassi Hill to defer back to the Legislative Reference Office for redrafting; seconded by David P. Jordan. Motion carried unanimously.
- 7/15/15/ LOC:** Motion by Jennifer Webster to defer the Petition: Child Care Department Consumer Complaint Policy back to the Legislative Reference Office to make changes; seconded by David P. Jordan. Motion carried unanimously.
- 2/13/17:** *Work meeting held.* Attendees include: David P. Jordan, Jennifer Webster, Brandon Stevens, Clorissa Santiago, Candice Skenandore, Liz Somers, Tom Wilbur
- 2/15/17 LOC:** Motion by Jennifer Webster to establish a high priority level for the Petition: Child Care Department Consumer Complaint Policy; seconded by Tehassi Hill. Motion carried unanimously.
- 5/1/17:** *Work Meeting Held.* Attendees include: Clorissa Santiago, Candice Skenandore, Jennifer Falck, Tehassi Hill, Cheona Webster, Jessica Wallenfang, Stephen Webster, Dorothy Skenandore, George Skenandore, Cathy Bachhuber, Fawn Billie, Brandon Stevens. Drafter will update the draft with changes discussed during work meeting.
- 5/17/17 LOC:** Motion by Jennifer Webster to review and accept the draft Child Care Department Consumer Complaint law and send for analysis to be completed by June 7, 2017; seconded by David P. Jordan. Motion carried unanimously.

#### Next Steps:

- Approve the public meeting packet and forward the Child Care Department Consumer Complaint law to a public meeting to be held on June 29, 2017;
- Forward to the Finance Office for a fiscal analysis due to the Legislative Reference Office June 28, 2017.

NOTICE OF  
**PUBLIC MEETING**

TO BE HELD

**Thursday, June 29th at 12:15 p.m.**

IN THE

**OBC CONFERENCE ROOM**

**(2<sup>nd</sup> FLOOR—NORBERT HILL CENTER)**

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

**TOPIC: Child Care Department Consumer Complaint Law**

**This is a proposal to create a new Child Care Department Consumer Complaint law which would:**

- Describe the process for filing a complaint against the Oneida Child Care Department [see 902.4].
- Provide for a complaint coordinator to receive and handle all complaints alleged against the Oneida Child Care Department [ see 902.5], and describe the complaint coordinator's responsibilities [ see 902.6].
- Provide guidelines for how the severity of a complaint and who will investigate the complaint will be determined [see 902.8].
- Provide a process by which complaints will be investigated [see 902.9 and 902.10].
- Allow for investigation results to be appealed [see 902.11].
- Describes how video surveillance footage will be maintained [see 902.12].
- Provide requirements for employee reporting [ see 902.13], reporting to the Oneida Business Committee [ see 902.14], enforcement [see 902.16], and the development of a Parent-Teacher Organization [see 902.15].

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit

**[www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings)**

or contact the Legislative Reference Office.

**PUBLIC COMMENT PERIOD  
 OPEN UNTIL July 7, 2017**

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

**Legislative Reference Office**

**PO Box 365 Oneida, WI 54155**

**LOC@oneidanation.org**

**Phone: (920) 869-4376 or (800) 236-2214**

**Fax: (920) 869-4040**



# Child Care Department Consumer Complaint Legislative Analysis

## SECTION 1. BACKGROUND

REQUESTER: Vandehei et al	SPONSOR: Jennifer Webster	DRAFTER: Clorissa Santiago	ANALYST: Candice E. Skenandore
<b>Intent of Proposed Law</b>	Motion by General Tribal Council to develop a parent communications and grievance process for the Child Care Department [See GTC Meeting, November 19, 2012].		
<b>Purpose</b>	Provide a formal process for addressing complaints for anyone that uses the services of the Oneida Child Care Department (Department). This Law is not intended to resolve employee complaints or grievances [See Child Care Department Consumer Complaint, 9 O.C. 902.1-1].		
<b>Affected Entities</b>	Oneida Child Care Department (including the Director, Department employees, Supervisor and Supervisor's designee), Area Manager of Education and Training, Governmental Services Division Director, Ombudsperson, Wisconsin Department of Children & Families (DCF), Oneida Police Department (OPD), parent or guardian utilizing the Department's services, anyone on the child's emergency contact list, anyone that witnesses any action that warrants an investigation, Area Manager's designee, Records Management Department, Risk Management Department, trained mediator, and the Judiciary.		
<b>Affected Legislation</b>	Investigative Leave Policy, Rules of Appellate Procedure, Oneida Policy on Reporting Child Abuse and Neglect, Personnel Policies and Procedures, Oneida Early Childhood Program-Internal Investigation of Complaints.		
<b>Enforcement/Due Process</b>	An employee that violates this Law or retaliates against the child or family involved in the complaint can be disciplined pursuant to the Personnel Policies and Procedures [See Child Care Department Consumer Complaint, 9 O.C. 902.16-1].		
<b>Public Meeting</b>	A public meeting was held on October 31, 2013 and February 27, 2014. The LOC may want to consider holding an additional public meeting because of significant changes made to the Law.		

## SECTION 2. LEGISLATIVE DEVELOPMENT

- A. On May 9, 2012, the Oneida Business Committee (OBC) accepted a petition which mandated the OBC to review, amend and implement a new complaint process for the Oneida Child Care. The intent of this petition was to provide the minimum requirements of the new process which include mandatory administrative leave during investigations, investigation timelines, providing explanation of results and quarterly reporting of all complaints to the Child Care Division Director and OBC. The petition was presented to the General Tribal Council (GTC) on November 19, 2012 and the GTC directed the OBC to review, amend and implement a new parent communications and grievances process for the Oneida Child Care Department.

## SECTION 3. CONSULTATION

- A. The following departments/experts were consulted in the development of this Law and legislative analysis:
- LOC

- Child Care Department
- Former Area Manager of Higher Education
- Internal Audit
- Risk Management
- Finance
- Law Office
- Petitioners
- Governmental Services Division Director
- Records Management
- Management Information Systems (MIS)
- Representatives from the Chairperson's Office
- Wisconsin Department of Children & Families

**B.** The Investigative Leave Policy, Oneida Policy on Reporting Child Abuse, Oneida Child Care Department Grievance Process, and Neglect, and Oneida Early Childhood Program-Internal Investigation of Complaints were reviewed in drafting this analysis. Furthermore, the following documents/laws were consulted when developing this analysis:

- Sample Parent Teacher Organization (PTO) Bylaws by PTO Today
- Mille Lacs Band Statutes Annotated, Title 8 Children and Families, Ch. 11 Child Care
- DCF, Youngstar, Point Detail Report: Oneida Child Care
- Garland R. Quarles Elementary School PTO Bylaws
- Wisconsin Heights PTO Bylaws
- Deerfield Elementary School PTO Bylaws
- Spooner Area Schools PTO Bylaws
- Eagle's Landing Middle School PTO Bylaws
- Westwood Elementary School PTO Bylaws
- Fairway Elementary School PTO Bylaws
- Charlottesville High School PTO Bylaws
- Prairieview PTO Bylaws
- Wisconsin Child Care Barred Offenses Table (10/16)
- Chapter DCF 251: Group Child Care Centers
- Wisconsin Administrative Code: Division of Early Care and Education, DCF 251-Licensing Rules for Group Child Care Centers
- DCF Guide to Regulate Child Care
- Washington State Department of Early Learning
- Wis. Stats. 48 Subchapter XV: Child Care Providers
- Wisconsin Child Welfare PDS Mandated Reporter Training
- Bromley Children's Social Care Division Procedures Manual
- Children, Youth & Families Division, City of Boulder, Child Care Provider Complaint Policy
- Filing a Formal Complaint Against an Accredited Center-Accreditation Criteria and Procedures of the Nation Academy of Early Childhood Programs
- North Carolina Department of Health and Human Services: Division of Child Development & Early Education-Complaints

## **SECTION 4. PROCESS**

- 59 A. Thus far, this Law has followed the process set forth in the Legislative Procedures Act.
- 60 B. The following motions were made at General Tribal Council regarding this Law:
- 61     ▪ **November 19, 2012:** Motion by Jessica Wallenfang to direct the Oneida Business Committee
- 62         to review, amend and implement a new parent communications and grievances process for
- 63         the Oneida Childcare Department, which includes requested actions by March 1, 2013 and a
- 64         final update shall be brought back to GTC at the July 2013 Semi-Annual meeting, seconded
- 65         by Bernie John Stevens. Motion carried by a show of hands.
- 66     ▪ **July 1, 2013:** Motion by John Orie to accept the update, seconded by Francis Huntington.
- 67         Motion approved by a show of hands.
- 68 C. This item was added to the active files list on June 5, 2013. It was carried over from the previous
- 69     LOC term and was re-added to the active files list on September 17, 2014.
- 70 D. The following work meetings were held in developing this Law:
- 71     ▪ June 10, 2013
- 72     ▪ June 24, 2013
- 73     ▪ April 17, 2014: LOC, Finance, Law Office, Internal Audit, Petitioners, Governmental
- 74         Services Division (GSD) Director, Area Manager, Department, Risk Management,
- 75         Chairperson
- 76     ▪ April 30, 2014: Internal Audit, Risk Management, Finance, GSD Director, Area Manager,
- 77         Department, Petitioners, Ombudsperson, LOC
- 78     ▪ November 18, 2014: LOC, Department, Petitioners, Finance, Internal Audit, Chairperson's
- 79         Office, Risk Management, Area Manager
- 80     ▪ November 24, 2014: Records Management
- 81     ▪ December 5, 2014: LOC, Department, Ombudsperson
- 82     ▪ December 12, 2014: MIS, Records Management
- 83     ▪ February 23, 2015: Area Manager, Department, LOC, Risk Management, Internal Audit,
- 84         Petitioners, Finance, Chairperson's Office
- 85     ▪ February 12, 2017: LOC, Governmental Services Division (GSD) Director, Area Manager
- 86     ▪ May 1, 2017: LOC, Petitioners, Records Management, Director, GSD Director
- 87

## 88 SECTION 5. CONTENTS OF THE LEGISLATION

89 A. This is a new Law that will provide a formal process for how complaints against the Department are

90 handled. The following is an overview of this Law.

91     **1. Filing a Complaint.** A parent or guardian using the Department's services, anyone who is on the

92     child's emergency contact list, and/or any person who witnesses any action by the Department or an

93     employee that warrants an investigation can file a complaint. The complaint must be filed within 60

94     days of the alleged incident to guarantee a review. A complaint must be in writing or be submitted on

95     a form that will be developed by the Department and made available both at the facility and the

96     Department's webpage. The complaint must include a statement of facts that describes the

97     allegations, these fact must include (if known), the names of the child(ren), employee(s) and

98     witness(es) involved, date and time of incident, details of the allegations, noted impacts, and contact

99     information of the complainant. Complaints must be filed with complaint coordinator or the GSD

100     Director. An unsubstantiated complaint cannot be re-filed unless new facts or evidence are

101     discovered [*See Child Care Department Consumer Complaint, 9 O.C. 902.4*].



102 **2. Complaint Coordinator & Responsibilities.** The complaint coordinator receives and handles  
103 complaints filed against the Department. The complaint coordinator will be the Area Manager,  
104 Ombudsperson or a designee of the Area Manager [See *Child Care Department Consumer*  
105 *Complaint, 9 O.C. 902.5*]. The complaint coordinator's responsibilities include:

- 106 a. developing standard operating procedures for handling incomplete complaints
- 107 b. collecting video surveillance footage
- 108 c. notify the Department Director, GSD Director, complainant, the child's parents (if the  
109 complainant is not a parent of the child), and Risk Management (when appropriate).
- 110 d. determine the severity level of the complainant pursuant to the Law and assign a complaint  
111 investigator [See *Child Care Department Consumer Complaint, 9 O.C. 902.6*].

112 **4. Types of Complaints.** Section 902.7-1 lists examples of the types of complaints; however this is  
113 not an exhaustive list. Examples of the types of complaints include violations involving: licensed  
114 capacity, reports of incidents, background checks, reporting child abuse or neglect, staff orientation,  
115 supervision of children, medications, transportation, child management techniques, behavior of  
116 employees, and more.

117 **5. Severity of Complaints.** This Law identifies four levels of severity in which a complaint will be  
118 classified.

- 119 a. *Level 1.* Level 1 complaints are considered very mild, mild or moderate and may include  
120 complaints that pertain to poor business practices, inadequate equipment and furnishings,  
121 inappropriate discipline, parents not being notified of injury. Level 1 complaints will be  
122 investigated by the supervisor [See *Child Care Department Consumer Complaint, 9 902.8-1*  
123 *(a)*].
- 124 b. *Level 2.* Level 2 complaints are considered serious that do not pose a risk of direct harm to  
125 the child. Such complaints may include medication or drugs being left in reach of the child,  
126 failing to obtain emergency medical care for a child, or minor physical injury to a child.  
127 Level 2 complaints will be investigated by the supervisor but may also be investigated by  
128 DCF [See *Child Care Department Consumer Complaint, 9 O.C. 902.8-1 (b)*].
- 129 c. *Level 3.* Level 3 complaints are considered very serious and pose a risk of direct harm to the  
130 child. Such complaints may include gross violations of ratio and supervision, abandoned  
131 children, severe injury to a child, unlocked weapons accessible to children, employee under  
132 the influence of drugs or alcohol. Level 3 complaints are investigated by both the supervisor  
133 and OPD or other law enforcement agency. In addition, the DCF may also investigate the  
134 complaint. Employees accused of level 3 complaints may be placed on investigative leave  
135 pursuant to the Investigative Leave Policy. If multiple investigations are being conducted  
136 and there is no agreement on to substantiate the complaint, the complaint coordinate will have  
137 discretion to proceed with reviewing and finalizing the substantiated findings and corrective  
138 plan [See *Child Care Department Consumer Complaint, 9 O.C. 902.8-1 (c)*].
- 139 d. *Level 4.* Level 4 complaints deal with child abuse and neglect and result in imminent danger  
140 to a child. These complaints are investigated by supervisor, DCF and OPD or another law  
141 enforcement agency. Employees that have a level 4 complaint against them will  
142 automatically be placed on investigative leave. If the complaint is substantiated, the  
143 employee will have his/her employment automatically terminated. If one of the  
144 investigations substantiates the complaint, the complaint coordinator will have the discretion

to proceed with the termination of employment [See *Child Care Department Consumer Complaint*, 9 O.C. 902.8-1 (d)].

**6. Processing Levels 1-3 Complaints.** The complaint coordinator will facilitate a mediation meeting(s) between the person who filed the complaint and the Department if the person who filed the complaint agrees to mediation. The parents of the child can also attend the mediation meetings. The mediation meeting must take place within five business days of the complaint being filed. If a resolution is not reached, a full investigation will be completed and the complaint coordinator will have five business days to recommend a complaint investigator [See *Child Care Department Consumer Complaint*, 9 O.C. 902.9-1].

The complaint investigator has five business days complete an investigation. During the investigation, the complaint investigator can 1) conduct interviews with the appropriate individuals, 2) collect statements from potential witnesses, 3) review video surveillance footage, and 4) any other investigative methods appropriate to complete a thorough investigation. The complaint coordinator can grant the complaint investigator an additional five business day extension for extenuating circumstances. If an extension is granted, the complaint coordinator must provide written notice to the person filing the complaint within 24 hours of the extension [See *Child Care Department Consumer Complaint*, 9 O.C. 902.9-2].

The complaint investigator will determine whether to not to substantiate the complaint after the investigation is concluded and forward copies of all documents and findings to the complaint coordinator, Director and Division Director for review. This review must be completed within five business days of receiving the findings. If the complaint investigator determines the complaint to be unsubstantiated, the complaint coordinator, Director and Division Director can accept or override the complaint investigator's determination. If the decision is overridden, the Director must complete a corrective action plan within five business days from date the decision was overridden. The corrective action plan must be finalized by the complaint coordinator and Division Director within five business days. A decision to substantiate the finds cannot be overridden and the complaint investigator must then create a corrective action plan within five business days of forwarding the findings to substantiate the complaint. The Director and complaint coordinator must finalize the corrective action plan within five business days. When there are multiple complaint investigators investigating the same complaint (i.e. internal investigation and external investigation), a decision to substantiate the complaint will take precedence over any decision to not substantiate the complaint [See *Child Care Department Consumer Complaint*, 9 O.C. 902.9-3].

The complaint coordinator must notify the person that filed the complaint of the results of the investigation in writing within five business days of receiving a finalized corrective action plan or findings that the complaint was not substantiated. The information provided must include details of the investigation that would not compromise the legally-protected confidentiality of any person, whether or not the complaint was substantiated, any corrective act plan (if applicable) that redacts specific employee related matters or information and an explanation as to why the complaint was not substantiated, if applicable. The complaint coordinator will provide the Director and Division Director with the corrective action plan. This Law requires all employees to comply with any corrective action plan [See *Child Care Department Consumer Complaint*, 9 O.C. 902.9-5].

**7. Processing Level 4 Complaints.** When a complaint alleging child abuse or neglect is received, the complaint coordinator or anyone that receives the complaint must immediately refer the matter to the Wisconsin Department of Children and Families, the Oneida Police Department or other local law

enforcement agency for investigation. The complaint coordinator must also inform the supervisor and the supervisor must perform an investigation [See *Child Care Department Consumer Complaint*, 9 O.C. 902.10].

**8. Appeal.** If the complainant or parent is dissatisfied of the decision to not substantiate the complaint or is dissatisfied with the corrective action plan, he/she can appeal the decision to the GSD Director within ten business days of receiving the investigation results and/or corrective action plan. The GSD Director will complete a review and make a determination within five business days; however, if the GSD Director determines more time is needed to do further investigations, he/she can suspend the these time limits. The GSD Director must notify the complaint of his/her decision. If the complaint is dissatisfied with the GSD Director's decision, the complainant can appeal that decision to the Judiciary [See *Child Care Department Consumer Complaint*, 9 O.C. 902.11].

**9. Video Surveillance.** This Law requires the Department to have daily video surveillance. This video surveillance footage cannot be erased by anyone in the Department and must retain the footage for at least ten business days. Records Management Department is responsible for the secured maintenance of any video surveillance footage related to a complaint.

**10. Employee Self-Reporting.** If an employee witnesses another employee behaving in an unethical/inappropriate manner, he/she must immediately document and report the behavior to the complaint coordinator. The complaint coordinator will handle the report as if a complaint were filed. If an employee witnesses another employee engaging in child abuse or neglect, he/she must report the action(s) in accordance with the Oneida Policy on Reporting Child Abuse and Neglect [See *Child Care Department Consumer Complaint*, 9 O.C. 902.13].

**11. Mandatory Reporting to OBC.** The GSD Division must include complaint information regarding the Department in its quarterly report to the OBC. This information must include the number of complaints filed, how many complaints were substantiated and how many investigations were conducted. In addition, the GSD Division Director is required to report any continuous patterns of failure by the Department to follow the corrective actions plans to the OBC [See *Child Care Department Consumer Complaint*, 9 O.C. 902.14].

**12. Parent Teacher Organization.** This Law requires that a Parent Teacher Organization (PTO) be created which will all parents and the Department to collaborate to help improve the Department and lives of children [See *Child Care Department Consumer Complaint*, 9 O.C. 902.15]. The creation of the PTO is mandated the by General Tribal Council.

## SECTION 6. EFFECT ON EXISTING LEGISLATION

**A. Repeal the Oneida Early Childhood Program Policy-Internal Investigation of Complaints.** This Law repeals the Resolution BC 07-26-95-A Oneida Early Childhood Program Policy-Internal Investigation of Complaints. The purpose of the Oneida Early Childhood Program Policy-Internal Investigation of Complaints is to provide a format for addressing consumer complaints filed by anyone who uses Early Childhood Services [See *Oneida Early Childhood Program Policy-Internal Investigation of Complaints*]. At one time the Early Childhood Services was made up of both the Oneida Head Start and Child Care Departments; however, the two departments split in 1997, and the Oneida Head Start Department moved under the direction of the Oneida Social Services Area Manager, while the Child Care Department remained and continues to remain under the direction of the Education and Training Area Manager. When the Early Childhood Services' departments were split, the Oneida Early Childhood Program Policy-Internal Investigation of Complaints was no longer utilized but was never formally

dissolved or rescinded. That is why this Policy will supersede the Oneida Early Childhood Program Policy-Internal Investigation of Complaints.

**B. Investigative Leave Policy.** This Law states that if an employee is accused of child abuse or neglect, he/she will automatically be placed on investigative leave in accordance with the Investigative Leave Policy except that the Department does not need prior approval from the Human Resources Department (HRD) and the Division Director before placing the employee on leave which is a requirement in the Investigative Leave Policy [See *Child Care Department Consumer Complaint, 9 O.C. 902.8-1 (d)(4) and Investigative Leave Policy 2 O.C. 208.5-1*]. It may be more appropriate to include this exception language in the Investigative Leave Policy. The LOC may want to consider the following:

1. Leave the language in this Law that says that HRD and Division Director approval are not required prior to placing an employee on investigative leave for allegations of child abuse or neglect; or
2. Amend the Investigative Leave Policy to allow for automatic placement on investigative leave for allegations regarding criminal actions, actions that may affect licensing and actions alleging child abuse and/or neglect.

## SECTION 7. OTHER CONSIDERATIONS

**A.** If an employee is placed on leave during the investigation, it may disrupt child care operations due to State law restrictions that set how many children a child care worker can supervise. The following chart shows the children to child care worker ratio that is required by the State law [See *Wis. Admin. Code DCF ' 251.05 (4)*]. The Department will need to be aware of worker to child ratios when an employee is placed on investigative leave.

Maximum Group Size and Minimum Number of Child Care Workers in Group Child Care Centers		
Age of Children	Minimum Number of Child Care Workers to Children	Maximum Number of Children in a Group
Birth to 2 years	1:4	8
2 years to 2 ½ years	1:6	12
2 ½ years to 3 years	1:8	16
3 years to 4 years	1:10	20
4 years to 5 years	1:13	24
5 years to 6 years	1:17	34
6 years and over	1:18	36

**B.** According to the Department there have been 24 total complaints received from January of 2012 till April of 2017. Of the complaints, 19 were substantiated and 5 were found unsubstantiated. The following table illustrates the number of consumer complaints the Department received, the type of complaints and whether or not they were substantiated.

<b>Child Care Department Consumer Complaints (01/2012-04/2017)</b>				
<i>Year</i>	<i>Complaints</i>	<i>Type</i>	<i>Substantiated</i>	<i>Unsubstantiated</i>
2012	ARCC	None		
	NHCC 1	1-Teacher against Parent	Police matter/was borderline disorderly	
2013	ARCC 2	1-Parent against Teacher		Teacher did not put hands around child's neck
		1-Teacher against Grandparent	Teacher did not have child's schedule as required.	
	NHCC 4	1-Employee against Employee	Employee was discourteous towards other Employee	
		1-Employee against 3 Teachers	The 3 teachers did not closely supervise the child	
		1-Parent against Teacher	Teacher will use positive approach when dealing with parents	
		1-Employee against Teacher	Teacher will treat co-workers with tact, courtesy, respect, objectivity an maturity	
2014	ARCC 2	1-Grandparent against infant room policies about care	Policy was changed	
		1-Employee against Teacher	Disrespectful to training speaker	
	NHCC	None		
2015	ARCC 3	2-Parent against Teacher	Child was left unattended outside	
			Mistreatment, was reminded to be aware of how Teacher was talking to the children	
		1-Supervisor against Teacher	Disrespectful to Supervisor, will be more courteous	
	NHCC 3	1-Parent against Teacher	Getting bleach on child's shirt, Teacher will wipe off tables after spraying bleach solution disinfectant	
		2-Complaint on Teacher	Teacher yelling at children, Supervisor will work with Teacher	
				Alleging Teacher was disrespectful, Teacher left prior to investigation
2016	ARCC 9	1-Parent against Teacher	Leaving child on floor crying unattended, Teacher will acknowledge child in distress and ensure child is safe	
		3-Employee against Teacher	Had bottle of soda in front of children, will leave soda in	

			locker room	
			Eating fast food in front of children, Teacher will eat before punching in or during lunch break	
				Doing personal business during work time, was not found doing personal business
		1-Complaint against Teacher	Children in buggies too long, in the future children are only allowed to be in buggies for 20 minutes	
		1-Supervisor against Teacher		Teacher was asleep during nap time, Teacher was not napping
		1-Complaint against staff		Staff person was not found loitering in the hall
		1-Teacher against Teacher	Teacher left classroom leaving classroom out of ratio, verbal warning was given and Teacher will ensure that classroom will have required ratio prior to leaving	
		1-Complaint against West Wing	West Wing was not taking children outside, YoungStar requirements will be followed	
2017	ARCC	None		
<b>TOTAL COMPLAINTS: 24</b>			<b>19</b>	<b>5</b>

- C.** This Law mentions possible usage of an Ombudsperson; however, the GTC will consider a re-organization proposal of the Nation which may or may not include the Ombudsperson position. At the May 16, 2017 GTC meeting, a motion was made to leave the re-organization proposal on the table until the new BC administration comes into office [See *GTC Action Report Draft, Sunday, May 19, 2017; Tuesday, May 16, 2017*].
- D.** This Law requires the complaint coordinator to facilitate mediation meetings between the Department and the person who filed and complaint and/or the child's parents. The complaint coordinator can also use a trained mediator to facilitate the mediation meetings [See *Child Care Department Consumer Complaint, 9 O.C. 902.9-1*]. According to HRD, no mediation training is available through the training and development but the Equal Employment Opportunity Department has mediators. In the past, HRD had people certified in mediation and used the Winnebago Mediation Conflict Resolution Center to do the training [See <http://www.mediationwcrc.org/training>]. The LOC may want to consider adding language in the Law that requires HRD to provide mediation training.
- E.** Please refer to the fiscal impact statement for any financial impacts.

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## Title 9. Education – Chapter 902

### Child Care Department Consumer Complaint

902.1. Purpose and Policy  
902.2. Adoption, Amendment, Repeal  
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902.9. Processing Level One through Level Three Complaints  
902.10. Processing Level Four Complaints  
902.11. Appeal  
902.12. Video Surveillance  
902.13.  
902.14. Mandatory Reporting to the Oneida Business Committee  
902.15. Parent/Teacher Organization  
901.16. Enforcement

#### 902.1. Purpose and Policy

902.1-1. *Purpose.* The purpose of this law is to provide a formal process for addressing complaints for anyone who uses the services of the Oneida Child Care Department. The law is not intended to resolve employee complaints or grievances which shall be addressed through the process specified in the Nation's laws, rules and policies governing employment.

902.1-2. *Policy.* It is the policy of the Nation to provide a safe, secure and nurturing environment for all children that are enrolled in the Oneida Child Care Department. It is also the policy of the Nation to allow any person who utilizes the services of the Oneida Child Care Department to have any and all complaints concerning those services addressed in a timely and professional manner.

#### 902.2. Adoption, Amendment, Repeal

902.2-1. This law is adopted by the Oneida Business Committee by resolution \_\_\_\_\_.

902.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

902.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

902.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provision of this law shall control. Provided that this law repeals the following:

(a) Resolution BC-07-26-95-A *Policy on Internal Investigation of Complaints.*

902.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### 902.3. Definitions

902.3-1. This article shall govern the definitions of words and phrases used within the law. All words not herein defined shall be used in their ordinary and everyday sense.

(a) "Abuse" means any of the following:

- (1) Physical injury inflicted on a child by other than accidental means;
- (2) Sexual assault of a child;
- (3) Sexual exploitation of a child;
- (4) Permitting, allowing, or encouraging a child to be involved in prostitution;

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- 32 (5) Causing mental harm to a child; or  
33 (6) Causing a child to view or listen to sexual activity or sexually explicit materials.  
34 (b) "Area Manager" means the individual employed by the Nation as the Area Manager of  
35 Education and Training within the Governmental Services Division.  
36 (c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding  
37 holidays recognized by the Nation.  
38 (d) "Complaint" means an allegation of certain wrongdoing against the Oneida Child Care  
39 Department or employee.  
40 (e) "Complaint coordinator" means the individual designated to receive and handle all  
41 complaints alleged against the Oneida Child Care Department.  
42 (f) "Complaint investigator" means any of the following individuals as recommended by the  
43 complaint coordinator to investigate alleged complaints against the Oneida Child Care  
44 Department:  
45 (1) the supervisor of an Oneida Child Care Department employee that has a  
46 complaint alleged against him or her;  
47 (2) the supervisor's substitute; and/or(3) an outside agency designated to  
48 investigate a complaint, including but not limited to, the Wisconsin Department  
49 of Children and Families and a law enforcement agency.  
50 (g) "Conflict of interest" means any interest, real or apparent, whether it be personal,  
51 financial, political, or otherwise, in which a person or their immediate family, friends,  
52 associates, or any other person with whom they have contact with, have that conflicts with  
53 any right or interest of the Nation. Conflicts of interest include any situation that has the  
54 potential to corrupt a person's motivation or decision making, because of an actual or  
55 apparent divergence between the person's self-interests, and the best interests of the Nation.  
56 (h) "Department" means the Oneida Child Care Department.  
57 (i) "Director" means the individual employed by the Nation as the Oneida Child Care  
58 Department Director.  
59 (j) "Division Director" means the individual employed by the Nation as the Governmental  
60 Services Division Director.  
61 (k) "Employee" means an individual employed by the Nation in the Oneida Child Care  
62 Department.  
63 (l) "Nation" means the Oneida Nation.  
64 (m) "Neglect" means a failure, refusal or inability of an Oneida Child Care Department  
65 employee to provide necessary care, food, clothing, medical care or shelter so as to  
66 seriously endanger the physical health of a child, lack of supervision, or total  
67 abandonment.  
68 (n) "Ombudsperson" means an individual employed by the Nation who functions as a  
69 designated confidential, independent, neutral and informal dispute resolution resource  
70 that does not represent the Nation or any specific party, but advocates for fairness and  
71 the application of a fair and equitable process.  
72 (o) "Substantiated" means a finding that the complaint or allegation in the complaint is valid  
73 because there is proof by a preponderance of the evidence.



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(p) “Supervisor” means the individual who directly oversees an Oneida Child Care Department employee, which may include the Oneida Child Care Department Director.

(q) “Unsubstantiated” means a finding that the complaint or allegation in the complaint is not valid because there is not proof by a preponderance of the evidence.

#### **902.4. Filing of a Complaint**

902.4-1. *When to File.* A complaint filed within sixty (60) days of the alleged incident shall guarantee a review of the complaint. Any complaint filed after sixty (60) days from the alleged incident shall not guarantee an investigation.

(a) Although a complaint can be filed within sixty (60) days of an alleged incident, video surveillance footage is only available from the Department for ten (10) days after an alleged incident occurs.

902.4-2. *Who May File.* The following people may file a complaint:

(a) Any parent or guardian who is currently utilizing the services of the Department;

(b) Any person who is on the child’s emergency contact list that has been submitted to the Department; and/or

(c) Any person who witnesses any action by the Department or an employee that would warrant an investigation.

902.4-3. *Format of Complaint.* A complaint shall be filed in one (1) of the following formats:

(a) the specific form provided for by the Department, which shall at all times be made available at the facility as well as on the Department’s webpage; or

(b) in writing as long as it contains the statement of facts required by section 902.4-4.

902.4-4. *Statement of Facts.* The complaint filed shall contain a statement of facts which describes the specific allegations made against the Department and/or an employee. The statement of facts shall include, if known, but is not limited to the following information:

(a) The name(s) of the child(ren) involved;

(b) The name(s) of the employee(s) involved;

(c) The specific date(s) and time(s) of the alleged incident(s);

(d) The specific details of the alleged incident;

(e) Name(s) of any witness(es) to the alleged incident;

(f) Any noted impacts; and

(g) The contact information for the person filing the complaint, which at minimum shall include the person’s name, address and telephone number.

902.4-5. *Where to File Complaint.* Completed complaints shall be delivered to the complaint coordinator. If the complaint coordinator is unavailable, then a complaint shall be delivered to the Division Director.

902.4-6. *Repeat Complaints.* A complaint that was deemed unsubstantiated or rejected on appeal shall not be re-filed unless new facts or new evidence have been discovered.

#### **902.5. Complaint Coordinator**

902.5-1. The complaint coordinator shall receive and handle all complaints alleged against the Department. The complaint coordinator shall be one (1) of the following individuals:

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- (a) The Area Manager;
- (b) The Ombudsperson; or
- (c) A designee assigned by the Area Manager.

## **902.6. Responsibilities of the Complaint Coordinator Upon Receipt of a Complaint.**

902.6-1. *Receipt of an Incomplete Complaint.* The complaint coordinator shall develop standard operating procedures for handling complaints that are missing the information required for the statement of facts.

902.6-2. *Collection of Video Surveillance.* The complaint coordinator shall immediately contact the Department and request that the Department secure an electronic copy of the appropriate video surveillance footage that is relevant to the complaint if the video surveillance footage is still available. The complaint coordinator shall provide the video surveillance footage to the Nation's Records Management Department.

902.6-3. *Notification of Receipt of Complaint.* Upon receipt of the complaint, the complaint coordinator shall immediately forward a copy of the complaint to the Director and Division Director. The complaint coordinator shall also notify the person filing the complaint by mail or e-mail that the complaint was received and what the next steps will be.

902.6-4. *Notification of the Parents of the Child.* If the person who filed the complaint is not the parent of the child at issue, the parent(s) of the child shall be noticed throughout the complaint process whenever the person who filed the complaint is notice. This will include notice of receipt of the complaint, what the next steps will be, mediation, extension of the investigation, and the results of the investigation.

902.6-5. *Determination of Severity of Complaint and the Complaint Investigator.* Upon receipt of the complaint, the complaint coordinator shall make a determination as to the severity of the complaint and recommend to the Department an appropriate complaint investigator. The complaint coordinator shall have five (5) business days to refer the matter to the complaint investigator. However, if the person who filed the complaint agrees to mediate the matter with the complaint coordinator, any time limits under this law may be suspended while the parties are in mediation. The complaint coordinator shall have five (5) business days to recommend a complaint investigator, if needed, after mediation ends.

902.6-6. *Notification of the Risk Management Department.* If the complaint coordinator determines the complaint is a severity level two (2), three (3) or four (4), the complaint coordinator shall forward a redacted copy of the complaint to the Risk Management Department.

## **902.7. Types of Complaints**

902.7-1. Complaints against the Department may include, but are not limited to, violations involving the following:

- (a) licensed capacity;
- (b) reports of incident or accident;
- (c) background checks;
- (d) reporting abuse or neglect of a child;
- (e) qualifications of an employee;

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- (f) employee orientation;
- (g) supervision of children;
- (h) exceeding limit of employee-to-child ratio;
- (i) maintaining accurate attendance records;
- (j) maximum group size;
- (k) potential source of harm on premises (hazards);
- (l) outdoor play space – potential source of harm (hazards);
- (m) access to materials potentially harmful to children;
- (n) flaking or deteriorating paint;
- (o) energy absorbing surfaces on playgrounds;
- (p) medications;
- (q) pets or animals;
- (r) transportation;
- (s) infant sleep position;
- (t) compliance with laws;
- (u) behavior of employees;
- (v) potentially dangerous items on premise/firearms, ammunition on premises;
- (w) alcohol or non-prescribed drug use;
- (x) child management techniques; and/or
- (y) child abuse or neglect.

## **902.8. Determination of Severity of Complaint and the Complaint Investigator**

902.8-1. The complaint coordinator shall determine the severity of the complaint and recommend the appropriate complaint investigator by using the following guidelines:

### **(a) Level one (1) complaint:**

(1) *Severity.* The severity of a level one (1) complaint may be deemed very mild, mild or moderate.

(2) *Description.* A level one (1) complaint includes, but is not limited to, complaints of the following: poor business practices, inadequate equipment and furnishings, inappropriate discipline, parents not notified of injury.

(3) *Complaint Investigator.* A level one (1) complaint shall be investigated by the supervisor.

### **(b) Level two (2) complaint:**

(1) *Severity.* The severity of a level two (2) complaint shall be deemed serious.

(2) *Description.* A level two (2) complaint involves complaints that do not pose a risk of direct harm to children. Level two (2) complaints include, but are not limited to, medication or drugs and alcohol being left within the reach of children, failing to obtain emergency medical care for a child, and minor physical injury to a child.

(3) *Complaint Investigator.* A level two (2) complaint shall be investigated by the supervisor, but the investigation may also include the involvement of the Wisconsin Department of Children and Families if determined necessary by the complaint investigator.

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(c) Level three (3) complaint:

(1) *Severity*. The severity of a level three (3) complaint shall be deemed very serious.

(2) *Description*. A level three (3) complaint involves complaints that pose a risk of direct harm to children. Level three complaints include, but are not limited to, complaints of gross violations of ratio and supervision, abandoned children, severe injury to a child, unlocked weapons accessible to children, provider under the influence of alcohol or drugs.

(3) *Complaint Investigator*. A level three (3) complaint shall be investigated by the supervisor and the Oneida Police Department or other local law enforcement agency. The investigation may also include the involvement of the Wisconsin Department of Children and Families if determined necessary by the complaint investigator.

(4) The Department may place any employee accused of a level three (3) complaint on leave in accordance with the Nation's laws, policies, and rules governing investigative leave, except that the employee may be placed on leave until completion of the investigation. The employee shall not have contact with any child as it relates to their employment during the time the employee is on investigative leave. If placed on investigative leave, the employee shall be allowed to return to work if the complaint allegations are found to be unsubstantiated by all agencies completing an investigation. If the investigation by one (1) agency results in substantiated findings the complaint coordinator shall have the discretion to proceed with reviewing and finalizing the substantiated investigative findings and corrective plan.

(d) Level four (4) complaint:

(1) *Severity*. The severity of a level four (4) complaint shall be deemed child abuse or neglect.

(2) *Description*. A level four (4) complaint includes, but is not limited to, any action that results in the imminent danger to a child, such as child abuse or neglect.

(3) *Complaint Investigator*. A level four (4) complaint shall be investigated by the supervisor, Wisconsin Department of Children and Families and the Oneida Police Department or other local law enforcement agency.

(4) The Department shall automatically place any employee accused of a level four (4) complaint on leave in accordance with the Nation's laws, policies, and rules governing investigative leave, except that the Department does not need prior approval from the Human Resources Department manager or his or her designee and the Division Director prior to placing the employee on leave, and the employee may be placed on leave until the completion of the investigation. The employee shall not have contact with any child as it relates to their employment during the time the employee is on investigative leave. The employee shall be allowed to return to work if the complaint allegations are found to be unsubstantiated by all agencies completing an investigation. A substantiated level four (4) complaint shall result in the automatic termination of the employee. If the investigation by one (1) agency results in substantiated findings the complaint coordinator shall have the discretion to proceed with termination of the employee.

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902.8-2. *Conflict of Interest*. Any potential conflict of interest the complaint investigator may have in conducting the investigation shall be reported to the complaint coordinator. If it is determined that the complaint investigator has a conflict in conducting the investigation, the complaint coordinator shall recommend a new complaint investigator to conduct the investigation.

## **902.9. Processing Level One through Level Three Complaints**

902.9-1. *Mediation*. If the person who filed the complaint agrees, the complaint coordinator shall facilitate a mediation meeting(s) between the person who filed the complaint and the Department. The complaint coordinator may use a trained mediator to facilitate the mediation meetings. The parent(s) of the child shall have a right to attend the mediation meeting(s). This meeting shall take place within five (5) business days of the filing of the complaint. The intent of this meeting(s) is to resolve the complaint prior to commencing a full investigation.

(a) If a resolution is reached during mediation, the complaint coordinator shall inform the Director that a corrective action plan shall be prepared, if necessary, based on the agreement.

(b) If the matter is not resolved through mediation, a full investigation shall be completed and the complaint coordinator shall have five (5) business days to recommend a complaint investigator.

902.9-2. *Investigation*. Once the complaint investigator is assigned, he or she shall have five (5) business days to complete a thorough investigation.

(a) *Thorough Investigation*. A thorough investigation by the complaint investigator may include:

(1) An interview with the employee(s) involved in the complaint;

(2) An interview with the individual who made the complaint;

(3) The collection of statements from any potential witnesses;

(4) The review of any available video surveillance footage; and

(5) Any other investigative method the complaint investigator deems appropriate in order to complete a thorough investigation.

(b) *Extension of the Investigation*. The complaint coordinator may grant a five (5) business day extension for extenuating circumstances. If an extension is granted, the complaint coordinator shall send written notice to the person filing the complaint within twenty-four (24) hours of that extension being granted.

902.9-3. *Results of the Investigation*. Upon completion of the investigation, the complaint investigator shall either substantiate or not substantiate the complaint and forward copies of all documents and findings to the complaint coordinator, Director, and Division Director for review. The complaint coordinator, Director, and Division Director shall complete a review within five (5) business days of receiving the investigation findings.

(a) *Unsubstantiated Findings*. The complaint coordinator, Director, and/or Division Director may accept or override the complaint investigator's determination that the complaint is not substantiated.

(1) If the complaint coordinator, Director, and/or Division Director decide to override the complaint investigator's decision to not substantiate the complaint, the Director shall complete a corrective action plan within five (5) business days of over-

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riding the decision to not substantiate the complaint.

(2) The Director's corrective action plan shall be finalized by the complaint coordinator and Division Director within five (5) business days.

(b) *Substantiated Findings*. The complaint investigator shall create a corrective action plan within five (5) business days of forwarding the investigation findings for a complaint that is substantiated.

(1) The complaint coordinator, Director, and Division Director shall not have the authority to override a decision by the complaint investigator to substantiate the complaint.

(2) The Director and complaint coordinator shall finalize the corrective action plan within five (5) business days.

(c) If investigations from different complaint investigators produce different results, a substantiated complaint shall take precedence over any unsubstantiated complaints.

902.9-4. *Notification of Results of the Investigation*. The complaint coordinator shall notify the person who filed the complaint of the results of the investigation in writing by U.S. or private mail using a delivery tracking feature within five (5) business days of receiving the finalized corrective action plan or findings that the complaint was not substantiated. The information provided to the person filing the complaint and/or the parent(s) of the child shall include, but is not limited to the following:

(a) Details of the investigation which would not compromise the legally-protected confidentiality of any other person;

(b) Whether or not the complaint was substantiated; and

(c) Any corrective action plan prepared to resolve the complaint, redacting specific employee related matters or information; or

(d) An explanation as to why the complaint is unsubstantiated, if necessary.

902.9-5. The complaint coordinator shall provide the corrective action plan to the Director and Division Director. All employees shall comply with any corrective action plan.

## **902.10. Processing Level Four Complaints**

902.10-1. When a complaint involving an allegation under level four (4) is filed against an employee the complaint coordinator or any other person receiving the complaint shall immediately refer the matter to the Wisconsin Department of Children and Families and Oneida Police Department or other local law enforcement agency for investigation and follow through with the investigation results. The complaint coordinator shall also inform the supervisor of the level four (4) complaint. The supervisor shall investigate the level four (4) complaint following the same process as a level one (1) through level three (3) complaint as described in section 902.9.

## **902.11. Appeal**

902.11-1. A person who filed a complaint, or the parent(s) of the child, may appeal the matter to the Division Director if he or she is dissatisfied with the finding that the complaint is unsubstantiated, or is dissatisfied with the corrective action plan. The appeal shall be in writing, and shall be submitted to the Division Director within ten (10) business days of receiving the results of the investigation

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and/or the corrective action plan.

902.11-2. The Division Director shall complete his or her review of the appeal and come to a determination within five (5) business days of receiving the written appeal. The Division Director may suspend the time limits for an appeal decision if the Division Director determines that more investigation on the matter is necessary. The Division Director shall then inform the person filing the appeal in writing of his or her decision.

902.11-3. If the person filing the appeal is dissatisfied with the Division Director's decision, he or she may appeal the Division Director's decision to the Nation's Judiciary pursuant to the Judiciary's Rules of Appellate Procedure.

### **902.12. Video Surveillance**

902.12-1. *Department Video Surveillance*. The Department, for security purposes, shall have daily video surveillance. The video surveillance footage shall not be erased by anyone in the Department. The Department shall retain the video surveillance footage for at least ten (10) days.

902.12-2. *Records Management Department Maintenance of Video Surveillance*. The Records Management Department shall be responsible for the secured maintenance of any video surveillance footage related to a complaint received from the complaint coordinator.

(a) Only the complaint coordinator, complaint investigator, Director, Division Director, police department, Risk Management Department, and/or the Wisconsin Department of Children and Families shall have access to the video surveillance footage.

(b) The video surveillance footage shall be viewed at the Records Department with the complaint coordinator or a Records Management Department personnel present.

(c) The Records Management Department shall maintain the video surveillance footage until the time period for an appeal to the Nation's Judiciary has expired.

(d) The Records Management Department shall follow a standard operating procedure for disposal of video surveillance that complies with the child care industry standard.

### **902.13. Employee Self-Reporting**

902.13-1. If any employee witnesses another employee behaving in an unethical or otherwise inappropriate manner as defined by the State of Wisconsin licensing requirements, that person shall immediately document and report such behavior to the complaint coordinator. An investigation shall be conducted as if a complaint was filed.

902.13-2. If any employee witnesses another employee engaging in behavior that constitutes child abuse or neglect, the employee shall immediately report the child abuse or neglect pursuant to laws governing reporting child abuse and neglect. The employee shall also report the witnessed abuse or neglect to the complaint coordinator. An investigation shall be conducted as if a complaint was filed.

### **902.14. Mandatory Reporting to the Oneida Business Committee**

902.14-1. The Governmental Services Division shall include in their quarterly report to the Oneida Business Committee complaint information for the Department. Complaint information regarding the Department shall include, but it not limited to, the following:

(a) the number of complaints filed against the Department and its employees;

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(b) number of substantiated complaints; and

(c) the number of investigation conducted.

902.14 -2. The Division Director shall address and report to the Oneida Business Committee any continuous patterns of failure by the Department to follow the corrective action plan.

**902.15. Parent-Teacher Organization**

902.15-1. The Department shall form a parent-teacher organization for the purpose of providing an opportunity for parents and the Department to come together in order to gather and share information, ideas, and concerns, plan activities to enhance or improve the Department and lives of children, and to foster community amongst all those involved.

**902.16. Enforcement**

902.16-1. A violation of this law or retaliation against the children or family involved in a complaint may result in discipline in accordance with the Nations laws, rules and policies governing employment.

*End.*

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**Title 9. Education – Chapter 902**  
**Child Care Department Consumer Complaint**  
**Addendum**

This chart may be used as a guide by the complaint coordinator to determine the severity of the Oneida Child Care Department complaint and recommend the appropriate complaint investigator as required by section 902.8-1 of the Child Care Department Consumer Complaint law.

LEVEL	CATEGORY	DESCRIPTION	WHO INVESTIGATES
1	Very Mild, Mild and Moderate	Complaints such as poor business practices, inadequate equipment or furnishings, inappropriate discipline, parents not notified of injury to child.	Supervisor, if not resolved through mediation with the complaint coordinator.
2	Serious	Complaints that do not pose a risk of direct harm to children, such as medication or drugs and alcohol being left within the reach of children, failing to obtain emergency medical care to a child, and minor physical injury to a child.	Supervisor; may also include the Wisconsin Department of Children and Families as determined by the complaint investigator.
3	Very Serious	Complaints that pose a risk of harm to children, such as gross violations of ratio and supervision, abandoned children, severe injury to a child, unlocked weapons accessible to children, provider under the influence of drugs or alcohol.	Supervisor and the Oneida Police Department or other local law enforcement agency. The investigation may also include the Wisconsin Department of Children and Families as determined by the complaint investigator.
4	Child Abuse or Neglect	Complaints regarding any action that results in the imminent danger to children, such as child abuse or neglect.	Supervisor, the Wisconsin Department of Children and Families, and the Oneida Police Department or other local law enforcement agency.



Legislative Operating Committee  
June 7, 2017

# Administrative Rulemaking Law Amendments

<b>Submission Date:</b> 03/15/17	<b>Public Meeting:</b> n/a
<b>LOC Sponsor:</b> Brandon Stevens	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This is a request to revise the law to clarify timelines and to make additional revisions to update the law.*

**3/15/17 LOC:** Motion by Jennifer Webster to place the Administrative Rulemaking Amendments on the Active Files List as a high priority and assign Brandon Stevens as the sponsor; seconded by Tehassi Hill. Motion carried unanimously.

**4/24/17 LOC:** *Work Meeting Held.* Present: Clorissa Santiago, Maureen Perkins, Jennifer Falck, Jennifer Webster, David P. Jordan, Tehassi Hill, Fawn Billie, Danelle Wilson, Rhiannon Metoxen, Rae Skenandore. Reviewed two versions of potential revisions. Drafter will make changes to draft.

**5/3/17 LOC:** Motion by Tehassi Hill to approve the draft Administrative Rulemaking law amendments and send for legislative analysis due back to the Legislative Operating Committee by May 17, 2017; seconded by Fawn Billie. Motion carried unanimously.

**5/17/17 LOC:** Motion by Fawn Billie to approve an extension to June 7, 2017 for the legislative analysis to be completed; seconded by David P. Jordan. Motion carried unanimously.

## Next Steps:

- Approve the public meeting packet and forward the Administrative Rulemaking law amendments to a public meeting to be held on June 29, 2017;
- Forward to the Finance Office for a fiscal analysis due to the Legislative Reference Office June 28, 2017.

NOTICE OF  
**PUBLIC MEETING**

TO BE HELD

**Thursday, June 29th at 12:15 p.m.**

IN THE

**OBC CONFERENCE ROOM**

**(2<sup>nd</sup> FLOOR—NORBERT HILL CENTER)**

In accordance with the Legislative Procedures Act, the Legislative Operating Committee is hosting this Public Meeting to gather feedback from the community regarding a legislative proposal.

**TOPIC: Administrative Rulemaking  
 Law Amendments**

**This is a proposal to amend the existing Administrative Rule-making law which would:**

- Clarify that a rule developed pursuant to this law shall not conflict or supercede a law, policy, or rule of the Nation or a resolution passed by the Oneida Business Committee or Oneida General Tribal Council *[see 106-4-1(b)]*.
- Provide that if the authorized agency provides a service to a defined base of customers or individuals the authorized agency may make reasonable efforts to provide additional notice of the public meeting to that base of customers or individuals that may be substantially affected by the proposed rule *[see 106.6-2(a)]*.
- Require additional public meetings to occur if substantial changes are made to the proposed rule after a public meeting *[106.6-6]*.
- Clarify what requirements the Legislative Operating Committee must ensure are met before certification of the proposed rule *[see 106.7-2]*.
- Provide that after certification by the Legislative Operating Committee, the proposed rule must be adopted by the Oneida Business Committee before it may become effective *[see 106.8 and 106.9]*.
- Require an authorized agency to conduct a review of each adopted rule every two (2) years after the rule is adopted *[see 106.12]*.

To obtain copies of the Public Meeting documents for this proposal, or to learn about the LOC public meeting process, please visit

**[www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings)**

or contact the Legislative Reference Office.

**PUBLIC COMMENT PERIOD  
 OPEN UNTIL July 7, 2017**

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person (Second floor, Norbert Hill Center) or by U.S. mail, interoffice mail, e-mail or fax.

**Legislative Reference Office**

**PO Box 365 Oneida, WI 54155**

**LOC@oneidanation.org**

**Phone: (920) 869-4376 or (800) 236-2214**

**Fax: (920) 869-4040**



# Administrative Rulemaking Amendments Legislative Analysis

## SECTION 1. BACKGROUND

REQUESTER: LRO	SPONSOR: Brandon Stevens	DRAFTER: Clorissa N. Santiago	ANALYST: Maureen Perkins
<b>Intent of the Amendments</b>	Revise the law to clarify timelines and when a rule becomes effective, and to make additional revisions to update the law.		
<b>Purpose</b>	The purpose of this law is to provide a process for the adoption and amendment of administrative rules <i>[see 106.1-1]</i> .		
<b>Affected Entities</b>	Legislative Operating Committee (LOC) and Legislative Reference Office (LRO) are given duties under this law; rules become effective upon Oneida Business Committee (OBC) adoption, all of the Nation's boards, committees, commissions, departments and officials with "Rulemaking Authority" are affected when developing/amending rules.		
<b>Affected Legislation</b>	The Legislative Procedures Act (LPA) identifies a similar process for the promulgation and adoption of the Nation's laws.		
<b>Enforcement/Due Process</b>	Judicial review of rules authorizes the Judiciary to issue declaratory judgments to determine the validity of a Rule in the same way it does for laws, as provided in 801.5-2(e) of the Judiciary Law. Rules can be challenged if they are not promulgated in accordance with this law.		
<b>Public Meeting</b>	A public meeting has not been held.		

## SECTION 2. LEGISLATIVE DEVELOPMENT

### A. The current amendments to the Administrative Rulemaking law include the following:

- Additional definitions *[see 106.3-1]*:
  - Program was added to the definition of entity *[see (d)]*.
  - Nation *[see (e)]*.
  - Officer *[see (f)]*.
  - Oneida Register was updated *[see (g)]*.
  - Statement of effect *[see (k)]*.
- Additional detail was included to ensure that rules do not conflict or supersede a law of the Nation or a resolution passed by the OBC or the GTC *[see 106.4-1(b)] and [see 106.5-2(b)] and [see 106.7-2(c)]*.
- New detail regarding additional notice of the public meeting held by the authorized agency to reach individuals substantially affected by the rule *[see 106.6-2(a)]*.
- A time limitation of not less than five (5) minutes for oral comments at public meetings was added and shall be enforced at the discretion of the presiding representative *[see 106.6-2(e)]*.
- The authorized agency may extend the public comment period by posting an amended public meeting notice before the close of the original comment period *[see 106.6-3]*.
- The Oneida Business Committee process for denial of a proposed rule has changed. The OBC may now adopt a proposed rule or send it back to the authorized agency for requested revisions *[see 106.8]*.
- Clarification was added that a rule becomes effective upon OBC adoption *[see 106.8-2]*.

- The effective date of a rule has changed from the LOC written certification of a proposed rule to the OBC adoption of the proposed rule *[see 106.9]*.
- The authorized agency shall create the administrative record and the LRO shall maintain the record *[see 106.10]*.
- A review process has been implemented for authorized agencies to review each adopted rule at least once every two years to ensure the rule is still effective and continues to serve the intended purpose. The OBC may not compel the authorized agency to amend a rule *[see 106.12]*.

B. There were not any alternatives considered that were not legislative.

C. The benefits expected from the proposed amendments include a process that allows the OBC to work with the authorized agency to draft rules that reflect the OBC's direction and the clarification of timelines and the process for authorized agencies.

### SECTION 3. CONSULTATION

A. No entities were consulted regarding the proposed amendments to this law. The proposed amendments clarify and simplify the process contained in the law. Proposed amendments reflect the LOC's and the LRO's experience with the law.

B. No other tribal laws have been researched or other organizations been consulted because the proposed amendments merely clarify the process.

### SECTION 4. PROCESS

A. The correct legislative process has been followed.

B. The Administrative Rulemaking amendments were added to the Active Files List on 3/15/17 as a high priority with Brandon Stevens as the sponsor. A public meeting has not yet been held.

### SECTION 5. CONTENTS OF THE LEGISLATION

A. This law establishes the process and requirements for adopting rules in relation to the Nation's laws. Authorized agencies are granted authority through a law to develop rules in relation to a specified aspect of the law. The law contains detail related to the process of developing rules.

B. The proposed amendments clarify and simplify the rulemaking process.

### SECTION 6. INTENT

▪ The purpose of the law is clearly stated to provide a process for the adoption and amendment of administrative rules.

▪ It is clear that the legislation applies to agencies authorized by law to develop administrative rules, the OBC, the LOC, and the LRO.

### SECTION 7. EFFECT ON EXISTING LEGISLATION

A. No other laws are impacted or conflict with the amendments to this legislation.

### SECTION 8. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

A. No existing rights, benefits or privileges are impacted by these amendments.

- B.** Due process is addressed by Judicial review of a rule and also the standard of review for actions taken by authorized agencies sections of the law [*see 106.13 and 106.14*].

## **SECTION 9. ENFORCEMENT**

- A.** Rules promulgated by authorized agencies under this law have the same force and effect as law; therefore the rules are enforced according to how the rules are drafted by the authorized agency.
- B.** The law is currently in place; the amendments do not affect any human resources to implement the changes.

## **SECTION 10. ACCOUNTABILITY**

- A.** The agency authorized to develop the rule will be accountable for the implementation and operation of the rule.
- B.** There are no required reports; however the agency is responsible for reviewing all rules every two years to ensure the rule still serves the intended purpose and if any amendments are necessary [*see 106.12*].

**Title 1. Government and Finances – Chapter 106****ADMINISTRATIVE RULEMAKING****Thotih<4& lutyani<slu-n>she>***they are the leaders, they are making the laws, policies and rules*

106.1. Purpose and Policy	106.8.9. Effective Date of Rules
106.2. Adoption, Amendment, Repeal	106.9.10. Emergency Rules
106.3. Definitions	
106.4. General	106.11. Creating and Maintaining an Administrative Record
106.5. Preparation of Proposed Rules	106.12. Review by the Authorized Agency
106.6. Public Comment Period on Proposed Rules	106.14.13. Judicial Review of a Rule
106.7. <del>Oneida</del> Legislative Operating Committee Certification of Procedural Compliance and Business Committee Review	106.14. Standard of Review for Actions Taken by Authorized Agency
106.8. Oneida Business Committee Adoption	

**106.1. Purpose and Policy**

106.1-1. *Purpose.* The purpose of this ~~Law~~law is to provide a process for the adoption and amendment of administrative ~~Rules~~rules.

106.1-2. *Policy.* It is the policy of the ~~Tribe~~Nation to ensure:

(a) ~~There~~ there is an efficient, effective and democratic process for enacting and revising administrative ~~Rules~~rules.

(b) ~~That Authorized Agencies~~rules, and that authorized agencies act in a responsible and consistent manner when enacting and revising ~~the administrative Rules~~rules.

**106.2. Adoption, Amendment, Repeal**

106.2-1. This ~~Law~~law was adopted by the Oneida Business Committee by resolution ~~BC-02-24-16-C-~~and amended by BC.

106.2-2. This ~~Law~~law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

106.2-3. Should a provision of this ~~Law~~law or the application thereof to any person or circumstances be held as invalid, such invalidity ~~does~~shall not affect other provisions of this ~~Law~~law which are considered to have legal force without the invalid portions.

106.2-4. In the event of a conflict between a provision of this ~~Law~~law and a provision of another law, the provisions of this ~~Law~~law shall control.

106.2-5. This ~~Law~~law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin~~Nation.

**106.3. Definitions**

106.3-1. This ~~Section governs~~section shall govern the definitions of words and phrases used within this ~~Law~~law. All words not defined herein ~~are to~~shall be used in their ordinary and everyday ~~use~~sense.

(a) “Authorized ~~Agency~~agency” means any board, committee, commission, department, program or officer of the ~~Tribe~~Nation that has been granted ~~Rulemaking Authority~~rulemaking authority.

(b) “Business ~~Day~~day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the ~~Tribe~~Nation.

(c) “Financial ~~Analysis~~analysis” means an estimate of the total fiscal year financial effects associated with a proposed ~~Rule~~rule prepared by the ~~Authorized~~

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Agency~~authorized agency~~ proposing the Rule~~rule~~. It includes startup costs, personnel, office, documentation costs, and an estimate of the amount of time necessary for an individual or agency to comply with the Rule~~rule~~ after implementation.

(d) “Entity” means a board, committee or commission created by the Oneida General Tribal Council or the Oneida Business Committee whose members are appointed by the Oneida Business Committee or elected by the majority of the Tribe’s~~Nation’s~~ eligible voters, and also any department or program of the Tribe~~Nation~~.

(e) “Nation” means the Oneida Nation.

(f) “Officer” means an individual holding the position of chairperson, vice chairperson, secretary or treasurer on a board, committee or commission of the Nation, including the Oneida Business Committee.

(g) “Oneida Register” means the ~~free legal periodical published on the Tribe’s website by the~~ Legislative Operating ~~Committee which contains~~ Committee’s publication on the Nation’s website containing, at a minimum, agency Rules~~rules~~, proposed legislation and notices, and ~~either the Oneida Code of Laws or directions to obtain free access to the Oneida Code of Laws.~~

(~~h~~) “Rule” means a set of requirements enacted by an ~~Authorized Agency~~authorized agency in order to implement, interpret and/or enforce a law of the Tribe~~Nation~~, which ~~includes~~may include citation fee and penalty schedules.

(~~g~~) “Rulemaking Authority~~authority~~” means the delegation of authority to ~~Authorized Agencies~~authorized agencies found in the Tribe’s~~Nation’s~~ laws, other than this Law~~law~~, which allows ~~Authorized Agencies~~authorized agencies to implement, interpret and/or enforce a law of the Tribe~~Nation~~.

(~~h~~) “Statement of Effect” means ~~a legislative and legal analysis which explains the effects that adopting a Rule would have on the Tribe.~~

(~~i~~) “Tribe” means the ~~Oneida Tribe of Indians of Wisconsin.~~

#### **106.4. General**

~~“Standard 106.4 1. Administrative Rulemaking. Only Authorized Agencies may promulgate Rules; this Law does not confer Rulemaking Authority. Authorized Agencies shall adhere to the Rulemaking procedures as provided in this Law. Authorized Agencies may promulgate Rules interpreting the provisions of any law enforced or administered by it; provided that, a Rule may not exceed the Rulemaking Authority granted under the law for which the Rule is being promulgated.~~

(~~j~~) (a) ~~This Law does not apply to standard operating procedures, which for the purposes of this section are”~~ means statements, interpretations, decisions, internal rules, regulations, internal policies, procedures or other matters concerning internal management of an agency, which do not affect the private rights or interests of individuals outside of the agency.

(~~k~~) “Statement of effect” means an analysis of the proposed rule which explains potential conflicts and effects that adopting a rule would have on the Nation’s current legislation.



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#### 106.4. General

106.4-1. *Administrative Rulemaking.* ~~(b) Only authorized agencies may promulgate rules. Authorized agencies shall be granted rulemaking authority by a law of the Nation, provided that, this law does not confer rulemaking authority. Authorized agencies may promulgate rules interpreting the provisions of any law enforced or administered by it; provided that, a rule may not exceed the rulemaking authority granted under the law for which the rule is being promulgated. Authorized agencies shall adhere to the rulemaking procedures as provided in this law.~~

(a) Rules developed pursuant to this ~~Law~~law have the same force and effect as the law which delegated the ~~Authorized Agency Rulemaking Authority and must~~authorized agency rulemaking authority and shall be followed by both the general public and the ~~Authorized Agency~~authorized agency promulgating the ~~Rule~~rule.

(b) A rule developed pursuant to this law shall not conflict or supersede a law, policy or rule of the Nation or a resolution passed by the Oneida Business Committee or the Oneida General Tribal Council.

(c) This law does not apply to the Nation's standard operating procedures.

106.4-2. ~~Authorized Agency Solicitation of Comment on General Subject Matter.~~ For the purpose of soliciting public ~~comment, an Authorized Agency~~comments, ideas and opinions, an authorized agency may hold a public meeting on the general subject matter of a possible or anticipated ~~Rule~~rule before preparing a proposed ~~Rule. However, a rule.~~ A public meeting under this subsection does not satisfy the ~~public comment period~~requirements of ~~Section~~section 106.6 hereof with respect to promulgation of a specific proposed ~~Rule~~rule.

106.4-3. *Substantial Compliance.* Any ~~Rule~~rule hereafter adopted is valid only if adopted in substantial compliance with this ~~Law, however~~law. Rules already in effect at the time of this ~~Law's~~law's adoption remain in effect unless directed to be updated based on this ~~Law's~~law's requirements by the Oneida Business Committee. Any amendments made to ~~Rules~~rules already in effect ~~must~~shall follow the requirements of this ~~Law~~law.

#### 106.5. Preparation of Proposed Rules

106.5-1. *Form and Style.* The Legislative Operating Committee shall create a template for ~~Rules~~rules with which ~~Authorized Agencies~~authorized agencies shall comply; the ~~said~~template is not subject to the procedural requirements of this ~~Law~~law.

(a) At a minimum, all ~~Rules must~~rules shall be numbered in the following consistent manner "1-1(a)(1)(A)(i)" where:

- (1) "1-1" means the first section.
- (2) "(a)" means the first subsection.
- (3) "(1)" means the second subsection.
- (4) "(A)" means the third subsection.
- (5) "(i)" means the fourth subsection.

\_\_\_\_\_(6) All other numbering after the fourth subsection ~~must~~shall be in a logical manner.

106.5-2. *Summary Report.* The ~~Authorized Agency~~authorized agency shall prepare a summary report regarding each proposed ~~Rule, which must~~rule. The summary report shall be attached to the proposed ~~Rule~~rule when presented for public comment, and included in the administrative

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record for ~~approval through certification by~~ the ~~Oneida~~-Legislative Operating Committee and ultimately ~~for adoption by~~ the Oneida Business Committee. The summary report ~~must~~shall include the following:

- (a) the name of the proposed ~~Rule~~rule;
- (b) a reference to the law that the proposed ~~Rule~~rule interprets, along with a list of any other related laws ~~or~~, rules, or resolutions that may be affected by the proposed ~~Rule~~rule;
- (c) a brief summary of the proposed ~~Rule and~~rule;
- (d) any changes made to the proposed ~~Rule~~rule based on the public comment period required by ~~Section~~section 106.6 ~~hereof~~, if applicable;
- (~~de~~) a ~~Statement~~statement of ~~Effect~~effect for the ~~Rule which~~rule prepared by the Legislative Reference Office ~~shall prepare~~upon request by the ~~Authorized Agency~~authorized agency; and
- (~~ef~~) the ~~Financial Analysis, for which~~financial analysis.

(1) The authorized agency shall prepare the ~~Authorized Agency~~financial analysis. The authorized agency shall send a written request to each ~~Entity~~entity that may be affected by the proposed ~~Rule~~rule soliciting information on how the proposed ~~Rule~~rule would financially affect the ~~Entity; each Entity's~~entity. Each entity's response indicating its financial affects ~~must~~shall be included in the ~~Financial Analysis~~financial analysis.

(~~1~~2) If an ~~Authorized Agency~~authorized agency does not receive a response from one (1) or more ~~Entities~~entities regarding its request for the ~~Entities'~~financial effects of the ~~Rule on the entity~~ within ten (10) business days of the date of the request, ~~it~~the authorized agency may submit a ~~Financial Analysis~~financial analysis noting which ~~Entities~~entities were non-responsive to its request.

## 106.6. Public Comment Period on Proposed Rules

106.6-1. Required Public Comment Period. A proposed ~~Rule, except a Rule promulgated under the emergency Rules exemptions under Section 106.9, must~~rule shall be preceded by a public comment period, which ~~must~~shall include a public meeting.

(1) A rule promulgated under the emergency rules exemptions described in section 106.10 shall not be required to have a public comment period or public meeting.

(2) Nothing in this ~~Section~~section prohibits or restricts the holding of any other type of community meeting which may be used to gather input on ~~Rules~~rules.

106.6-2. Public Meetings. ~~When a~~A public meeting on a proposed ~~Rule is scheduled by an Authorized Agency, it must~~rule shall be held in accordance with the following requirements.

(a) Notice. The ~~Authorized Agency~~authorized agency shall set a date for the public meeting and have ~~the~~a public meeting notice published in the Kalihwisaks and on the Oneida Register not less than ten (10) business days prior to the meeting. If the authorized agency provides a service to a defined base of customers or individuals the authorized agency may make reasonable efforts to provide additional notice of the public meeting to that base of customers or individuals that may be substantially affected by the proposed rule.

(b) Requirements for Public Meeting Notice. The public meeting notice ~~must~~shall include:

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166 (1) the date, time, and location of the scheduled public meeting;  
 167 (2) information for electronically accessing the proposed rule and summary  
 168 report required under Section 106.5-2 and a statement that hard copies of the  
 169 materials will be available with the Entity; authorized agency; and  
 170 (2) the date, time, and place of the scheduled public meeting; and  
 171 (3) the name, address, phone number, and other appropriate information to  
 172 submit written comments on the Rule and the time period during which the  
 173 Authorized Agency shall accept written comments.

174 (c) The Authorized Agency shall hold a public meeting at the date,  
 175 time and place designated in the meeting notice.

176 (d) Presiding Representative. The Authorized Agency holding the  
 177 public meeting shall have a representative to preside at the meeting who shall briefly  
 178 describe the Rule which is the subject of the public meeting and the nature of the  
 179 Rule's requirements, and then open the meeting for comments.

180 (1) The Authorized Agency's presiding representative is not required  
 181 to comment or respond to comments at the meeting, but may, at his/her discretion, offer  
 182 clarity at his or her discretion. (e) Time Limitation. The authorized agency's presiding  
 183 representative may impose a time limit for all oral testimony. Any time limit imposed  
 184 shall not be less than five (5) minutes and shall be applied to all persons equally.

185 (ef) Registration. The Authorized Agency shall create and bring to the  
 186 public meeting a sign-in sheet; persons. Persons attending the public meeting shall  
 187 register at the meeting by signing the sign-in sheet.

188 (fg) The Authorized Agency shall audio record the public meeting and  
 189 persons who provide oral comments shall state their name for the record.

190 (gh) The Authorized Agency shall hold the record open for the  
 191 submission of written comments for a minimum of five (5) business days following the  
 192 public meeting, provided that, the Authorized Agency may extend the comment period as  
 193 it deems appropriate by posting an amended Notice of Public Meeting based on the notice  
 194 requirements found in Section 106.6-2(b) at any time prior to the close of the original  
 195 public comment period which identifies the extended comment period ending date.

196 106.6-3. Public Comments. The Authorized Agency 106.6-3. Extension of Public Comment  
 197 Period. The authorized agency may extend the public comment period as it deems appropriate  
 198 by posting an amended public meeting notice. The amended public meeting notice shall follow  
 199 the posting requirements found in section 106.6-2(b). The amended public meeting notice shall  
 200 identify the extended public comment period ending date and may be posted at any time prior to  
 201 the close of the original public comment period.

202 106.6-4. Consideration of Public Comments. The authorized agency shall fully consider all  
 203 comments received during the public comment period and during any public meeting held  
 204 regarding a proposed Rule.

205 106.6-5. Public Comment Memorandum. Once all public comments are received and the public  
 206 comment period closes, the authorized agency shall draft a memorandum containing all public  
 207 comments received and the authorized agency's response to each comment.

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106.6-6. Substantial Changes to Proposed Rule. The authorized agency shall hold an additional public meeting for the proposed rule if substantial changes are made to the proposed rule after the public comment period ends and all public comments are considered.

## **106.7. Oneida Legislative Operating Committee Certification of Procedural Compliance and Business Committee Review**

106.7-1. Submission of Rule Certification Materials. After ~~a public meeting is held and~~ the public comment period has expired, ~~the Authorized Agency and the authorized agency has~~ considered all public comments received, the authorized agency shall submit the proposed ~~Rule~~rule and ~~the~~all items ~~it must contribute for~~contained in the administrative record ~~pursuant to Section described in section~~ 106.4011 to the Legislative Operating Committee, ~~which is.~~

106.7-2. Requirements for Certification. The Legislative Operating Committee is responsible for certifying the proposed rule meets the following requirements:

(a) that promulgation of the Rulerule complies with the procedural requirements contained in this ~~Law.~~law;

(b) that the administrative record is complete; and

(c) that the rule does not exceed its rulemaking authority or conflict with any other law, policy, rule or resolution of the Nation.

106.7-~~2.~~3. Rule Certification. Upon receipt of a complete rule certification submission, ~~as required by this Section,~~ the Legislative Operating Committee shall take one (1) of the following actions:

(a) Certify the Rule. If the Legislative Operating Committee ~~is able to certify that the Authorized Agency determines the authorized agency~~ has complied ~~herewith, it shall forward items (b) and (c) of the Administrative Record under Section 106.10 received by with the requirements for certification stated in section 106.7-2,~~ the Legislative Operating Committee shall certify the proposed rule.

(1) Upon certification of the rule the Legislative Operating Committee shall forward the administrative record to the Oneida Business Committee with a written certification that the requirements of this Lawlaw ~~have been fulfilled, and shall publish the Rule on the Oneida Register; or,~~

(b) Deny Certification of the Rule. If the Legislative Operating Committee ~~is not able to certify~~determines that the ~~Authorized Agency~~authorized agency has ~~not~~ complied ~~herewith, it~~with the certification requirements stated in section 106.7-2 the Legislative Operating Committee shall not certify the proposed rule.

(1) Upon the denial of certification of the rule the Legislative Operating Committee shall return the proposed Rulerule to the ~~Authorized Agency~~authorized agency with specific feedback as to which ~~procedural~~ requirements were not fulfilled ~~by the Authorized Agency.~~

(2) The authorized agency may resubmit the proposed rule for certification by the Legislative Operating Committee once all requirements for certification have been met.

## **106.7-38. Oneida Business Committee Adoption**

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106.8-1. Oneida Business Committee Consideration. The Oneida Business Committee shall review ~~the proposed Rule, the summary report, the memorandum containing the public comments that were received, both orally and written, and the Authorized Agency's response to each comment~~ consider the proposed rule, the administrative record, and the Legislative Operating Committee's certification of compliance. ~~–If~~

106.8-2. Oneida Business Committee Adoption. After review of all materials submitted and consideration of the proposed rule, the Oneida Business Committee may take one of the following actions:

(a) Adopt the Proposed Rule. The Oneida Business Committee may adopt, by motion, the proposed rule. A majority vote is required for the adoption of a rule by the Oneida Business Committee.

(1) The Legislative Operating Committee shall be responsible for publishing the rule on the Oneida Register upon review adoption by the Oneida Business Committee.

(b) Deny Adoption of the Proposed Rule. The Oneida Business Committee may deny adoption of the proposed rule if the Oneida Business Committee has any concerns and/or requested revisions to the ~~Rule, the Authorized Agency shall~~ rule. The Oneida Business Committee may request that the authorized agency work with the Oneida Business Committee to address any concerns.

~~(a) Unless the Oneida Business Committee repeals the Rule, the Rule will remain in effect while the Authorized Agency and the Oneida Business Committee jointly work to amend the existing Rule.~~

~~(1) Should the Oneida Business Committee repeal the Rule adopted by the Authorized Agency, the Rule that was in effect immediately previous to those repealed, if any, will be automatically reinstated and~~

## 106.9. Effective Date of Rules

106.9-1. The authorized agency shall determine a rule's effective ~~immediately upon the repeal of the Rule adopted by the Authorized Agency.~~

~~(b) If the Authorized Agency does not receive written notice from the Oneida Business Committee of intent to repeal or amend the Rule within thirty (30) days of the date the Oneida Business Committee is, provided notice of the Rule, the Rule will remain in effect as submitted and certified by the Legislative Operating Committee.~~

~~(c) Should the Oneida Business Committee pursue amendments to the Rule, the amendments must be completed through one (1) of the following actions within six (6) months from the date the amendments are initiated by the Oneida Business Committee:~~

~~(1) if the Authorized Agency and the Oneida Business Committee reach an agreement as to the content of the amendments, the Authorized Agency shall adopt the revised Rule that has been discussed with and agreed upon by the Oneida Business Committee. Provided that, if substantial revisions are requested by the Oneida Business Committee, where the consideration of a substantial revision is in the Authorized Agency's best informed discretion, the Authorized Agency shall hold an additional public comment period, which would restart the process beginning in Section 106.6 hereof ; or~~



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(2) if the Authorized Agency and the Oneida Business Committee do not reach an agreement as to the content of the amendments, the Oneida Business Committee may defer the Rule to the Legislative Operating Committee for revisions as directed by the Oneida Business Committee. If substantial revisions are requested by the Oneida Business Committee, where the consideration of a substantial revision is in the Legislative Operating Committee's best informed discretion, the Legislative Operating Committee shall hold an additional public comment period according to the requirements contained in Section 106.6 with the Legislative Operating Committee taking the place of the Authorized Agency. When the Rule is ready for adoption, the Legislative Operating Committee shall forward it to the Oneida Business Committee for consideration.

(d) If a revised Rule is not adopted by either the Authorized Agency or the Oneida Business Committee within six (6) months from the date the amendments are initiated by the Oneida Business Committee, the Rule originally adopted by the Authorized Agency will remain in effect.

(e) If revisions are made to the Rule by either the Authorized Agency or the Oneida Business Committee, such party making the revisions shall provide a final version of the Rule to the Legislative Operating Committee. Upon receipt, the Legislative Operating Committee shall update the Oneida Register with the final version of the Rule.

#### **106.8. rule Effective Date of Rules**

~~106.8-1.~~ The Authorized Agency shall determine a Rule's effective date, provided that a Rule may not become effective until the Legislative Operating Oneida Business Committee has provided adopts the Authorized Agency with the written certification required by Section proposed rule.

~~106.79-2(a).~~ A failure to publish an approved Rule-rule on the Oneida Register by its effective date does not change the effective date of the Rulerule.

#### 106.10.

#### **~~106.9.~~ Emergency Rules**

~~106.910-1.~~ Emergency Promulgation of a Rule. An ~~Authorized Agency~~authorized agency may present the ~~Oneida~~ Legislative Operating Committee with a proposed emergency ~~Rule without a public comment period being held if it finds there is a~~rule if the following conditions are met:

(a) An emergency situation exists that requires the enactment or amendment of a Rulerule for the immediate preservation of the public health, safety, or general welfare of the Reservation population; and ~~the~~

(b) The enactment or amendment is required sooner than would be possible under the normal rulemaking procedures.

106.10-2. Rulemaking process. ~~The Authorized Agency~~Submission of an Emergency Rule. The authorized agency shall submit the following to the Legislative Operating Committee for emergency rule submission:

(a) the proposed emergency ~~Rule with reasoning to justify~~rule;

(b) justification for the emergency promulgation of the rule; and ~~a~~

(c) the summary report, ~~provided that.~~

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(1) For the financial analysis contained in the summary report, the deadline for ~~Entities'~~entities' submission of financial impacts pursuant to ~~Section~~section 106.5-2(e)(1f) may be reduced to a minimum of two (2) business days.

106.10-3. Legislative Operating Committee Review. Upon receipt of the emergency rule, the Legislative Operating Committee shall review the submission and take one (1) of the following actions:

(a) reject the proposed emergency ~~Rule~~rule on the basis that there is not a valid emergency; or

(b) accept that there is a valid basis for an emergency and forward the emergency ~~Rule~~rule to the Oneida Business Committee.

~~106.9-2.~~10-4. Oneida Business Committee Adoption. If the proposed emergency ~~Rule~~rule is forwarded to the Oneida Business Committee, the Oneida Business Committee shall review the proposed emergency ~~Rule~~rule, the summary report and the reasoning suggested for the emergency situation and take one (1) of the following actions:

(a) reject the proposed emergency ~~Rule~~rule on the basis that there is not a valid emergency; or

(b) accept that there is a valid basis for an emergency and adopt, by motion, the emergency ~~Rule~~rule, provided that, if the Oneida Business Committee deems it necessary, it may make revisions to the emergency ~~Rule~~rule.

(1) If the Oneida Business Committee makes revisions to the emergency ~~Rule~~rule that the ~~Authorized Agency~~authorized agency does not support, such concerns may be addressed when the ~~Authorized Agency~~authorized agency begins the process for enactment of the permanent ~~Rule~~rule.

~~106.9-3~~10-5. An emergency ~~Rule~~rule becomes effective immediately upon its adoption by the Oneida Business Committee and remains in effect for a period of up to six (6) months,~~with~~.

106.10-6. Emergency Rule Extension. There is an opportunity for a one-time emergency extension of an emergency rule for up to six (6) months. Requests for the one-time emergency extension may be brought by the ~~Authorized Agency~~authorized agency directly to the Oneida Business Committee for consideration and shall become effective upon the Oneida Business Committee's approval and adoption by motion. ~~An emergency Rule will:~~

~~(a)~~106.10-7. Expiration of an Emergency Rule. An emergency rule will expire when:

(a) six (6) months have passed since the emergency ~~Rule~~rule went into effect and an emergency ~~Rule~~rule extension has not been approved; or

(b) ~~expire when~~ six (6) months have passed since the emergency ~~Rule~~rule extension went into effect; or

(c) ~~no longer be in effect when a~~ ~~Rule~~rule is permanently adopted in the emergency ~~Rule's~~rule's place before the emergency ~~Rule~~rule expires under (a) or (b).

~~106.9-4. As soon as possible after emergency adoption, and if~~10-8. Permanent Adoption of Emergency Rule. If permanent adoption of the emergency rule is desired, the ~~Authorized Agency~~authorized agency shall follow the ~~regular~~normal rulemaking procedures as provided under this ~~Law~~law to adopt the permanent ~~Rule.~~rule. The authorized agency may start the permanent adoption process immediately after the emergency rule is adopted.

106.10-9-5. The Legislative Operating Committee shall publish the emergency ~~Rule~~rule on the Oneida Register.

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~~106.10. Creating and Maintaining an~~

**106.11. Administrative Record of Rules**

~~106.10-1. *Creation of an Administrative Record.* The Legislative Reference Office, with information the Authorized Agencies shall provide,~~ authorized agency shall create ~~and maintain a complete~~ an administrative record of all proposed and adopted ~~Rules, which must~~ rules. The administrative record shall include the following:

(a) A memorandum provided by the ~~Authorized Agency~~ authorized agency containing the ~~Rule's~~ rule's procedural timeline including the dates the requirements of this ~~Law~~ law were fulfilled ~~by the Authorized Agency and any supporting documentation, which includes, but is not limited to;~~

~~(1) Drafts~~ (b) The summary report required under section 106.5-2;

(c) Draft of the ~~Rule~~ proposed rule, and a draft of the rule considered for the required ~~Public Meeting~~ public meeting;

~~(2d)~~ The Public Meeting public meeting notice;

~~(3e)~~ If the Rule rule is being amended, redline drafts from the currently effective ~~Rule~~ rule illustrating the proposed amendments;

~~(4f)~~ Minutes from the authorized agency's meeting during which the proposed ~~Rule~~ rule was considered as an agenda item, or, if the ~~Authorized Agency~~ authorized agency is not a board, committee or commission, a memo from the ~~Entity's~~ authorized agency's highest level of management approving the proposed ~~Rules; and~~ rule;

~~(5) Any other supporting information that may be requested by the Legislative Reference Office;~~

~~(b) The summary report required under Section 106.5 2 provided by the Authorized Agency;~~

~~(e)~~ (g) A memorandum provided by the ~~Authorized Agency~~ authorized agency containing the public comments that were received, both orally and written, and the ~~Authorized Agency's~~ authorized agency's response to each comment; and

~~(d)~~ The effective dates of the original Rules rule and any Rule rule amendments subsequently made as established by the ~~Authorized Agency~~ authorized agency; and

(i) Any other supporting information that may be requested by the Legislative Reference Office;

106.11-2. *Maintenance of the Administrative Record.* The authorized agency shall provide the Legislative Reference Office a complete administrative record for each proposed and adopted rule. The Legislative Reference Office shall maintain a complete administrative record for all proposed and adopted rules.

~~106.11-3. *106.10-2.*~~ Prior to publishing approved Rules rules on the Oneida Register ~~under either Section 106.7 3(f) or 106.9 5,~~ the Legislative Operating Committee shall create and/or update the administrative history on each Rule rule which ~~must~~ shall include the original effective date of the Rule rule and the effective date of any amendments made to the Rule rule.

**106.12. Review by the Authorized Agency**

106.12-1. *Biennial Review.* The authorized agency shall conduct a review of each adopted rule promulgated by the authorized agency at least once every two years after the rule is adopted by



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the Oneida Business Committee.

106.12-2. Consideration during Review. During the review the authorized agency may consider, but is not limited to the consideration of, whether the rule continues to serve its intended purpose and if any amendments to the rule are necessary.

106.12-3. The authorized agency shall have the authority to decide if amendments to a rule are necessary to pursue. The Oneida Business Committee shall not compel an authorized agency to amend a rule.

106.13.

### **106.11. Judicial Review of a Rule**

106.11-1. The ~~Judiciary~~Oneida Nation Trial Court may render a declaratory judgment to determine the validity of a ~~Rule~~rule in the same manner that the Judiciary may do so for a ~~Law~~law; as identified in ~~section 150.5-2(e) of the Nation's~~ Judiciary Law. ~~Provided that, no Rule law. No rule~~ may be contested based on non-compliance with the procedural requirements of this ~~Law~~law after one (1) year has elapsed from the effective date of the ~~Rule~~rule.

106.11-2. Upon the ~~Authorized Agency's~~authorized agency's receipt of notice that an appeal has been filed regarding a ~~Rule~~rule of the said agency, the ~~Authorized Agency~~authorized agency that promulgated the ~~Rule~~rule shall request the ~~Administrative Record~~administrative record of the ~~Rule~~rule created under ~~Section~~section 106.1011 from the Legislative Reference Office and shall submit the ~~said~~administrative record to the Oneida ~~Judiciary~~Nation Trial Court.

106.14.

### **106.12. Standard of Review for Actions Taken by Authorized Agencies**

106.12-1. Any ~~Tribal body~~entity of the Nation hearing an appeal or contest of an action taken pursuant to ~~Rules~~rules created under ~~Authorized Agencies~~the authority delegated ~~authority to an authorized agency~~ and the requirements of this ~~Law~~law, upon consideration of the ~~Rule~~rule and the circumstances regarding the action taken may take any one (1) of the following actions:

- (a) Uphold the action taken;
- (b) Reverse or modify the action taken; ~~or~~
- (c) If at the second level of appeal, remand the matter for further consideration.

106.12-2. When hearing an appeal or contest of an action ~~as described in this Section~~, the ~~Tribal~~hearing body shall recognize that the ~~Authorized Agency~~authorized agency is accepted by the ~~Tribe~~Nation as the subject matter expert in the given field and shall provide the ~~Authorized Agency~~authorized agency with deference by upholding the action unless it finds that the action:

- (a) Amounts to a violation of the ~~Tribe's~~Nation's Constitution;
- (b) Was in excess of the ~~Authorized Agency's Rulemaking Authority~~authorized agency's ~~rulemaking authority~~ or is otherwise unlawful;
- (c) Was clearly erroneous in view of the entire administrative and factual records; ~~or~~
- (d) Was arbitrary or capricious; or
- (e) Exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision and if said irregularity were not present, the decision would have been different.

End.

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Amended – BC-

**Title 1. Government and Finances – Chapter 106**  
**ADMINISTRATIVE RULEMAKING**

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*they are the leaders, they are making the laws, policies and rules*

106.1.	Purpose and Policy	106.9.	Effective Date of Rules
106.2.	Adoption, Amendment, Repeal	106.10.	Emergency Rules
106.3.	Definitions	106.11.	Creating and Maintaining an Administrative Record
106.4.	General	106.12.	Review by the Authorized Agency
106.5.	Preparation of Proposed Rules	106.13.	Judicial Review of a Rule
106.6.	Public Comment Period on Proposed Rules	106.14.	Standard of Review for Actions Taken by Authorized Agency
106.7.	Legislative Operating Committee Certification		
106.8.	Oneida Business Committee Adoption		

**106.1. Purpose and Policy**

106.1-1. *Purpose.* The purpose of this law is to provide a process for the adoption and amendment of administrative rules.

106.1-2. *Policy.* It is the policy of the Nation to ensure there is an efficient, effective and democratic process for enacting and revising administrative rules, and that authorized agencies act in a responsible and consistent manner when enacting and revising administrative rules.

**106.2. Adoption, Amendment, Repeal**

106.2-1. This law was adopted by the Oneida Business Committee by resolution BC-02-24-16-C and amended by BC\_\_\_\_\_.

106.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

106.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

106.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

106.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**106.3. Definitions**

106.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Authorized agency” means any board, committee, commission, department, program or officer of the Nation that has been granted rulemaking authority.

(b) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(c) “Financial analysis” means an estimate of the total fiscal year financial effects associated with a proposed rule prepared by the authorized agency proposing the rule. It includes startup costs, personnel, office, documentation costs, and an estimate of the amount of time necessary for an individual or agency to comply with the rule after implementation.

(d) “Entity” means a board, committee or commission created by the Oneida General Tribal Council or the Oneida Business Committee whose members are appointed by the

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Oneida Business Committee or elected by the majority of the Nation's eligible voters, and also any department or program of the Nation.

(e) "Nation" means the Oneida Nation.

(f) "Officer" means an individual holding the position of chairperson, vice chairperson, secretary or treasurer on a board, committee or commission of the Nation, including the Oneida Business Committee.

(g) "Oneida Register" means the Legislative Operating Committee's publication on the Nation's website containing, at a minimum, agency rules, proposed legislation and notices, and the Oneida Code of Laws.

(h) "Rule" means a set of requirements enacted by an authorized agency in order to implement, interpret and/or enforce a law of the Nation, which may include citation fee and penalty schedules.

(i) "Rulemaking authority" means the delegation of authority to authorized agencies found in the Nation's laws, other than this law, which allows authorized agencies to implement, interpret and/or enforce a law of the Nation.

(j) "Standard operating procedures" means statements, interpretations, decisions, internal rules, regulations, internal policies, procedures or other matters concerning internal management of an agency, which do not affect the private rights or interests of individuals outside of the agency.

(k) "Statement of effect" means an analysis of the proposed rule which explains potential conflicts and effects that adopting a rule would have on the Nation's current legislation.

#### **106.4. General**

106.4-1. *Administrative Rulemaking.* Only authorized agencies may promulgate rules. Authorized agencies shall be granted rulemaking authority by a law of the Nation, provided that, this law does not confer rulemaking authority. Authorized agencies may promulgate rules interpreting the provisions of any law enforced or administered by it; provided that, a rule may not exceed the rulemaking authority granted under the law for which the rule is being promulgated. Authorized agencies shall adhere to the rulemaking procedures as provided in this law.

(a) Rules developed pursuant to this law have the same force and effect as the law which delegated the authorized agency rulemaking authority and shall be followed by both the general public and the authorized agency promulgating the rule.

(b) A rule developed pursuant to this law shall not conflict or supersede a law, policy or rule of the Nation or a resolution passed by the Oneida Business Committee or the Oneida General Tribal Council.

(c) This law does not apply to the Nation's standard operating procedures.

106.4-2. *Solicitation of Comment on General Subject Matter.* For the purpose of soliciting public comments, ideas and opinions, an authorized agency may hold a public meeting on the general subject matter of a possible or anticipated rule before preparing a proposed rule. A public meeting under this subsection does not satisfy the public comment period requirements of section 106.6 with respect to promulgation of a specific proposed rule.

106.4-3. *Substantial Compliance.* Any rule hereafter adopted is valid only if adopted in substantial compliance with this law. Rules already in effect at the time of this law's adoption

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remain in effect unless directed to be updated based on this law's requirements by the Oneida Business Committee. Any amendments made to rules already in effect shall follow the requirements of this law.

## **106.5. Preparation of Proposed Rules**

106.5-1. *Form and Style.* The Legislative Operating Committee shall create a template for rules with which authorized agencies shall comply; the template is not subject to the procedural requirements of this law.

(a) At a minimum, all rules shall be numbered in the following consistent manner "1-1(a)(1)(A)(i)" where:

(1) "1-1" means the first section.

(2) "(a)" means the first subsection.

(3) "(1)" means the second subsection.

(4) "(A)" means the third subsection.

(5) "(i)" means the fourth subsection.

(6) All other numbering after the fourth subsection shall be in a logical manner.

106.5-2. *Summary Report.* The authorized agency shall prepare a summary report regarding each proposed rule. The summary report shall be attached to the proposed rule when presented for public comment, and included in the administrative record for certification by the Legislative Operating Committee and ultimately for adoption by the Oneida Business Committee. The summary report shall include the following:

(a) the name of the proposed rule;

(b) a reference to the law that the proposed rule interprets, along with a list of any other related laws, rules, or resolutions that may be affected by the proposed rule;

(c) a brief summary of the proposed rule;

(d) any changes made to the proposed rule based on the public comment period required by section 106.6, if applicable;

(e) a statement of effect for the rule prepared by the Legislative Reference Office upon request by the authorized agency; and

(f) the financial analysis.

(1) The authorized agency shall prepare the financial analysis. The authorized agency shall send a written request to each entity that may be affected by the proposed rule soliciting information on how the proposed rule would financially affect the entity. Each entity's response indicating its financial affects shall be included in the financial analysis.

(2) If an authorized agency does not receive a response from one (1) or more entities regarding its request for the financial effects of the rule on the entity within ten (10) business days of the date of the request, the authorized agency may submit a financial analysis noting which entities were non-responsive to its request.

## **106.6. Public Comment Period on Proposed Rules**

106.6-1. *Required Public Comment Period.* A proposed rule shall be preceded by a public comment period, which shall include a public meeting.

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(1) A rule promulgated under the emergency rules exemptions described in section 106.10 shall not be required to have a public comment period or public meeting.

(2) Nothing in this section prohibits or restricts the holding of any other type of community meeting which may be used to gather input on rules.

106.6-2. *Public Meetings.* A public meeting on a proposed rule shall be held in accordance with the following requirements.

(a) *Notice.* The authorized agency shall set a date for the public meeting and have a public meeting notice published in the Kalihwisaks and on the Oneida Register not less than ten (10) business days prior to the meeting. If the authorized agency provides a service to a defined base of customers or individuals the authorized agency may make reasonable efforts to provide additional notice of the public meeting to that base of customers or individuals that may be substantially affected by the proposed rule.

(b) *Requirements for Public Meeting Notice.* The public meeting notice shall include:

(1) the date, time, and location of the scheduled public meeting;

(2) information for electronically accessing the proposed rule and summary report and a statement that hard copies of the materials will be available with the authorized agency; and

(3) the name, address, phone number, and other appropriate information to submit written comments on the rule and the time period during which the authorized agency shall accept written comments.

(c) The authorized agency shall hold a public meeting at the date, time and place designated in the meeting notice.

(d) *Presiding Representative.* The authorized agency holding the public meeting shall have a representative to preside at the meeting who shall briefly describe the rule which is the subject of the public meeting and the nature of the rule's requirements, and then open the meeting for comments.

(1) The authorized agency's presiding representative is not required to comment or respond to comments at the meeting, but may at his or her discretion. (e) *Time Limitation.* The authorized agency's presiding representative may impose a time limit for all oral testimony. Any time limit imposed shall not be less than five (5) minutes and shall be applied to all persons equally.

(f) *Registration.* The authorized agency shall create and bring to the public meeting a sign-in sheet. Persons attending the public meeting shall register at the meeting by signing the sign-in sheet.

(g) The authorized agency shall audio record the public meeting and persons who provide oral comments shall state their name for the record.

(h) The authorized agency shall hold the record open for the submission of written comments for a minimum of five (5) business days following the public meeting.

106.6-3. *Extension of Public Comment Period.* The authorized agency may extend the public comment period as it deems appropriate by posting an amended public meeting notice. The amended public meeting notice shall follow the posting requirements found in section 106.6-2(b). The amended public meeting notice shall identify the extended public comment period ending date and may be posted at any time prior to the close of the original public comment period.

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106.6-4. *Consideration of Public Comments.* The authorized agency shall fully consider all comments received during the public comment period and during any public meeting held regarding a proposed rule.

106.6-5. *Public Comment Memorandum.* Once all public comments are received and the public comment period closes, the authorized agency shall draft a memorandum containing all public comments received and the authorized agency's response to each comment.

106.6-6. *Substantial Changes to Proposed Rule.* The authorized agency shall hold an additional public meeting for the proposed rule if substantial changes are made to the proposed rule after the public comment period ends and all public comments are considered.

### **106.7. Legislative Operating Committee Certification**

106.7-1. *Submission of Rule Certification Materials.* After the public comment period has expired and the authorized agency has considered all public comments received, the authorized agency shall submit the proposed rule and all items contained in the administrative record described in section 106.11 to the Legislative Operating Committee.

106.7-2. *Requirements for Certification.* The Legislative Operating Committee is responsible for certifying the proposed rule meets the following requirements:

(a) that promulgation of the rule complies with the procedural requirements contained in this law;

(b) that the administrative record is complete; and

(c) that the rule does not exceed its rulemaking authority or conflict with any other law, policy, rule or resolution of the Nation.

106.7-3. *Rule Certification.* Upon receipt of a complete rule certification submission the Legislative Operating Committee shall take one (1) of the following actions:

(a) *Certify the Rule.* If the Legislative Operating Committee determines the authorized agency has complied with the requirements for certification stated in section 106.7-2, the Legislative Operating Committee shall certify the proposed rule.

(1) Upon certification of the rule the Legislative Operating Committee shall forward the administrative record to the Oneida Business Committee with a written certification that the requirements of this law have been fulfilled.

(b) *Deny Certification of the Rule.* If the Legislative Operating Committee determines that the authorized agency has not complied with the certification requirements stated in section 106.7-2 the Legislative Operating Committee shall not certify the proposed rule.

(1) Upon the denial of certification of the rule the Legislative Operating Committee shall return the proposed rule to the authorized agency with specific feedback as to which requirements were not fulfilled.

(2) The authorized agency may resubmit the proposed rule for certification by the Legislative Operating Committee once all requirements for certification have been met.

### **106.8. Oneida Business Committee Adoption**

106.8-1. *Oneida Business Committee Consideration.* The Oneida Business Committee shall review and consider the proposed rule, the administrative record, and the Legislative Operating Committee's certification of compliance.

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106.8-2. *Oneida Business Committee Adoption.* After review of all materials submitted and consideration of the proposed rule, the Oneida Business Committee may take one of the following actions:

(a) *Adopt the Proposed Rule.* The Oneida Business Committee may adopt, by motion, the proposed rule. A majority vote is required for the adoption of a rule by the Oneida Business Committee.

(1) The Legislative Operating Committee shall be responsible for publishing the rule on the Oneida Register upon adoption by the Oneida Business Committee.

(b) *Deny Adoption of the Proposed Rule.* The Oneida Business Committee may deny adoption of the proposed rule if the Oneida Business Committee has any concerns and/or requested revisions to the rule. The Oneida Business Committee may request that the authorized agency work with the Oneida Business Committee to address any concerns.

### **106.9. Effective Date of Rules**

106.9-1. The authorized agency shall determine a rule's effective date, provided that a rule may not become effective until the Oneida Business Committee adopts the proposed rule.

106.9-2. A failure to publish an approved rule on the Oneida Register by its effective date does not change the effective date of the rule.

### **106.10. Emergency Rules**

106.10-1. *Emergency Promulgation of a Rule.* An authorized agency may present the Legislative Operating Committee with a proposed emergency rule if the following conditions are met:

(a) An emergency situation exists that requires the enactment or amendment of a rule for the immediate preservation of the public health, safety, or general welfare of the Reservation population; and

(b) The enactment or amendment is required sooner than would be possible under the normal rulemaking procedures.

106.10-2. *Submission of an Emergency Rule.* The authorized agency shall submit the following to the Legislative Operating Committee for emergency rule submission:

(a) the proposed emergency rule;

(b) justification for the emergency promulgation of the rule; and

(c) the summary report.

(1) For the financial analysis contained in the summary report, the deadline for entities' submission of financial impacts pursuant to section 106.5-2(f) may be reduced to a minimum of two (2) business days.

106.10-3. *Legislative Operating Committee Review.* Upon receipt of the emergency rule, the Legislative Operating Committee shall review the submission and take one (1) of the following actions:

(a) reject the proposed emergency rule on the basis that there is not a valid emergency; or

(b) accept that there is a valid basis for an emergency and forward the emergency rule to the Oneida Business Committee.

106.10-4. *Oneida Business Committee Adoption.* If the proposed emergency rule is forwarded to the Oneida Business Committee, the Oneida Business Committee shall review the proposed



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emergency rule, the summary report and the reasoning suggested for the emergency situation and take one (1) of the following actions:

(a) reject the proposed emergency rule on the basis that there is not a valid emergency; or

(b) accept that there is a valid basis for an emergency and adopt, by motion, the emergency rule, provided that, if the Oneida Business Committee deems it necessary, it may make revisions to the emergency rule.

(1) If the Oneida Business Committee makes revisions to the emergency rule that the authorized agency does not support, such concerns may be addressed when the authorized agency begins the process for enactment of the permanent rule.

106.10-5. An emergency rule becomes effective immediately upon its adoption by the Oneida Business Committee and remains in effect for a period of up to six (6) months.

106.10-6. *Emergency Rule Extension.* There is an opportunity for a one-time emergency extension of an emergency rule for up to six (6) months. Requests for the one-time emergency extension may be brought by the authorized agency directly to the Oneida Business Committee for consideration and shall become effective upon the Oneida Business Committee's approval and adoption by motion.

106.10-7. *Expiration of an Emergency Rule.* An emergency rule will expire when:

(a) six (6) months have passed since the emergency rule went into effect and an emergency rule extension has not been approved; or

(b) six (6) months have passed since the emergency rule extension went into effect; or

(c) a rule is permanently adopted in the emergency rule's place before the emergency rule expires under (a) or (b).

106.10-8. *Permanent Adoption of Emergency Rule.* If permanent adoption of the emergency rule is desired, the authorized agency shall follow the normal rulemaking procedures as provided under this law to adopt the permanent rule. The authorized agency may start the permanent adoption process immediately after the emergency rule is adopted.

106.10-9. The Legislative Operating Committee shall publish the emergency rule on the Oneida Register.

## **106.11. Administrative Record of Rules**

106.11-1. *Creation of an Administrative Record.* The authorized agency shall create an administrative record of all proposed and adopted rules. The administrative record shall include the following:

(a) A memorandum provided by the authorized agency containing the rule's procedural timeline including the dates the requirements of this law were fulfilled;

(b) The summary report required under section 106.5-2;

(c) Draft of the proposed rule, and a draft of the rule considered for the required public meeting;

(d) The public meeting notice;

(e) If the rule is being amended, redline drafts from the currently effective rule illustrating the proposed amendments;

(f) Minutes from the authorized agency's meeting during which the proposed rule was considered as an agenda item, or, if the authorized agency is not a board, committee or

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commission, a memo from the authorized agency's highest level of management approving the proposed rule;

(g) A memorandum provided by the authorized agency containing the public comments that were received, both orally and written, and the authorized agency's response to each comment; and

(h) The effective dates of the original rule and any rule amendments subsequently made as established by the authorized agency; and

(i) Any other supporting information that may be requested by the Legislative Reference Office;

106.11-2. *Maintenance of the Administrative Record.* The authorized agency shall provide the Legislative Reference Office a complete administrative record for each proposed and adopted rule. The Legislative Reference Office shall maintain a complete administrative record for all proposed and adopted rules.

106.11-3. Prior to publishing approved rules on the Oneida Register the Legislative Operating Committee shall create and/or update the administrative history on each rule which shall include the original effective date of the rule and the effective date of any amendments made to the rule.

## **106.12. Review by the Authorized Agency**

106.12-1. *Biennial Review.* The authorized agency shall conduct a review of each adopted rule promulgated by the authorized agency at least once every two years after the rule is adopted by the Oneida Business Committee.

106.12-2. *Consideration during Review.* During the review the authorized agency may consider, but is not limited to the consideration of, whether the rule continues to serve its intended purpose and if any amendments to the rule are necessary.

106.12-3. The authorized agency shall have the authority to decide if amendments to a rule are necessary to pursue. The Oneida Business Committee shall not compel an authorized agency to amend a rule.

## **106.13. Judicial Review of a Rule**

106.13-1. The Oneida Nation Trial Court may render a declaratory judgment to determine the validity of a rule in the same manner that the Judiciary may do so for a law; as identified in the Nation's Judiciary law. No rule may be contested based on non-compliance with the procedural requirements of this law after one (1) year has elapsed from the effective date of the rule.

106.13-2. Upon the authorized agency's receipt of notice that an appeal has been filed regarding a rule of the said agency, the authorized agency that promulgated the rule shall request the administrative record of the rule created under section 106.11 from the Legislative Reference Office and shall submit the administrative record to the Oneida Nation Trial Court.

## **106.14. Standard of Review for Actions Taken by Authorized Agencies**

106.14-1. Any entity of the Nation hearing an appeal or contest of an action taken pursuant to rules created under the authority delegated to an authorized agencies and the requirements of this law, upon consideration of the rule and the circumstances regarding the action taken may take any one (1) of the following actions:

(a) Uphold the action taken;

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- 344 (b) Reverse or modify the action taken; or  
345 (c) If at the second level of appeal, remand the matter for further consideration.  
346 106.14-2. When hearing an appeal or contest of an action, the hearing body shall recognize that  
347 the authorized agency is accepted by the Nation as the subject matter expert in the given field  
348 and shall provide the authorized agency with deference by upholding the action unless it finds  
349 that the action:
- 350 (a) Amounts to a violation of the Nation's Constitution;
  - 351 (b) Was in excess of the authorized agency's rulemaking authority or is otherwise
  - 352 unlawful;
  - 353 (c) Was clearly erroneous in view of the entire administrative and factual records;
  - 354 (d) Was arbitrary or capricious; or
  - 355 (e) Exhibited a procedural irregularity which would be considered a harmful error that
  - 356 may have contributed to the final decision and if said irregularity were not present, the
  - 357 decision would have been different.

358  
359 *End.*  
360

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361 Adopted – BC-02-24-16-C  
362 Amended – BC-



Legislative Operating Committee  
June 7, 2017

## Children's Code

<b>Submission Date:</b> 9/17/14	<b>Public Meeting:</b> 5/4/17
<b>LOC Sponsor:</b> Fawn Billie	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This item was carried over into the current term by the LOC. The proposal seeks to develop a Children's Code which would enable the Tribe to take jurisdiction of child welfare matters involving Tribal children. The proposal seeks establishment of a Child Welfare Office and the Oneida Child Protective Board, and would address child welfare proceedings including CHIPS; termination of parental rights; adoption; and foster home licensing.*

**9/17/14 LOC:** Motion by Fawn Billie to add the Children's Code to the Active Files List; seconded by Jennifer Webster. Motion carried unanimously. *Note: Fawn Billie will be the sponsor for this item.*

**12/17/14 LOC:** Motion by Jennifer Webster to move forward with requesting a fiscal analysis; seconded by Tehassi Hill. Seconder withdraws the second, motioner withdraws the motion; motion withdrawn. Motion by Tehassi Hill to direct the Legislative Operating Committee Chair to work with the appropriate staff to develop a memorandum directing the Governmental Services Division Director to fulfill the Finance Department's request for information regarding the Children's Code in order to prepare the fiscal analysis; seconded by Fawn Billie. Motion carried unanimously.

**1/28/15 OBC:** Motion by Lisa Summers to direct the Law Office to create a policy statement and to request the Legislative Operating Committee consider the Children's Code a priority, seconded by Tehassi Hill. Motion carried unanimously. [under F.2. Review Tribal Member Complaint Re: Child Protective Board]

**2/18/15:** *Work meeting held (with Social Services.) Attendees include: Brandon Stevens, Fawn Billie, Tehassi Hill, Jessica Wallenfang, Fawn Cottrell, Taniquelle Thurner, Danelle Wilson, Michelle Mays, Rae Skenandore, Kathleen Laplant, Jennifer Kruse, Roxann Pazdera, Candice Skenandore, Lynn Franzmeier*

**4/15/15 LOC:** Motion by Tehassi Hill to defer the Children's Code for 60 days for the fiscal and administrative analysis; seconded by Fawn Billie. Motion carried unanimously.

**6/17/15 LOC:** Motion by David P. Jordan to grant the 30-day extension requests and to accept the memorandum as FYI; seconded by Fawn Billie. Motion carried unanimously.

**7/15/15 LOC:** Motion by Fawn Billie to continue developing the Children's Code; seconded by David P. Jordan. Motion carried unanimously.

**1/20/16 LOC:** Motion by David P. Jordan to approve the Children's Code memorandum and to forward it to the Oneida Business Committee; seconded by Tehassi Hill. Motion carried unanimously.

**1/27/16 OBC:** Motion by Lisa Summers to accept the update from the Legislative Operating Committee on the new Children's Code timeline, seconded by Trish King. Motion carried unanimously.

- 2/11/16:** *Work meeting held.* Attendees include Jennifer Berg-Hargrove, Heather Lee, Michelle Mays, Patricia Garvey, Douglass McIntyre, Maureen Perkins.
- 10/7/16:** *Quarterly Sponsor Update Meeting Held.* Present: Fawn Billie, Cathy Bachhuber, Jennifer Falck, Maureen Perkins, Tani Thurner, Clorissa Santiago. Drafter (MG) was not present but updated the LRO Director before the mtg. She hopes to have a new draft in November or December 2016. Fawn will continue to update the Judiciary on this law, so they can begin to plan for a judge, admin. Staff, etc. if this is adopted.
- 12/19/16:** *Work Meeting Held.* Present: Jennifer Webster, Brandon Stevens, Jennifer Berg-Hargrove, David Jordan, Tehassi Hill, Fawn Billie, Maureen Perkins, Clorissa Santiago, Michelle Gordon, Candice Skenandore, Danelle Wilson, Heather Lee
- 1/23/17:** *Work Meeting w/ ICW.* Present: Jennifer Berg-Hargrove, Heather Lee, Jennifer Falck, Clorissa Santiago, Candice Skenandore, Cathy Bachhuber. Discussion surrounding implementation needs. Next steps include discussion with sponsor on adding exception in jurisdiction with blended families, discussion with Law Office about expanding jurisdiction to allow non-Oneidas to utilize the Family Court when they live on the Reservation and have Oneida parents/siblings, and set up a work meeting with ICW to begin going through Code and identifying ICW's roles and responsibilities.
- 1/23/17:** *Work Meeting w/ OFC.* Present: Hon. Marcus Zelenski, Patricia "Pixie" DeGrand, Jennifer Falck, Cathy Bachhuber, Clorissa Santiago, Candice Skenandore. Discussion surrounding implementation needs. Next steps include obtaining videoconferencing estimates, getting hearing numbers in Brown & Outagamie Counties that involve ICW and discussion with sponsor to determine if Children's Code should include court appointed counsel and juries as provided in State court.
- 2/15/17 LOC:** Motion by Jennifer Webster to upgrade the Domestic Animals Ordinance Amendments, the Children's Code, Code of Ethics Amendments, and the Sanctions and Penalties Law from medium priority to high priority; seconded by Tehassi Hill. Motion carried unanimously.
- 2/23/17:** *Work meeting w/ OFC.* Present: Hon. Marcus Zelenski, Pixie DeGrand, Rae Skenandore, Clorissa Santiago, Candice Skenandore.  
*Work meeting w/ ICW.* Present: Jennifer Berg-Hargrove, Heather Lee, Rae Skenandore, Clorissa Santiago, Candice Skenandore.
- 3/1/17 LOC:** Motion by Fawn Billie to forward the Children's Code to the Legislative Reference Office for a legislative analysis and a fiscal impact statement, to bring back the analyses or an update by the April 5<sup>th</sup> LOC meeting; seconded by Tehassi Hill. Motion carried unanimously.
- 3/1/17:** *Work meeting w/ OFC.* Present: Hon. Marcus Zelenski, Pixie DeGrand, Raeann Skenandore, Rae Skenandore, Candice Skenandore, Clorissa Santiago
- 3/3/17:** *Work meeting w/ ICW.* Present: Jennifer Berg-Hargrove, Heather Lee, Alebra Cornelius, Roxanne Pazdera, Jen Falck, Clorissa Santiago, Candice Skenandore, Rae Skenandore, Fawn Billie, Cathy Bachhuber
- 3/17/17:** *Work meeting w/ OPD.* Present: Candice Skenandore, Clorissa Santiago, Eric Boulanger, Rich Vanboxtel, Cathy Bachhuber.
- 4/5/17 LOC:** Motion by David P. Jordan to approve the public meeting packet with the noted change and forward the Child Welfare law to a public meeting to be held on May 4, 2017; seconded by Jennifer Webster. Motion carried unanimously.

*Noted Change:*

708.5-3. *Jurisdiction over other Matters Relating to Children.* If ~~personal~~ jurisdiction ~~over the child~~ has been established under section 708.5-1 and section 708.5-2 the Court may:

- (a) terminate parental rights to a child;
- (b) appoint, revise, and/or remove a guardian; and
- (c) hold adoption proceedings.

- 4/7/17:** *Work meeting held.* Attendees include: George Skenandore, Danelle Wilson, Candice Skenandore, Clorissa Santiago, Jen Falck, Pat Garvey, Tehassi Hill, Jessica Wallenfang, Jennifer Webster, Brandon Stevens
- 4/11/17:** *Work meeting w/ Child Support & ICW.* Present: Lisa Peck, Heather Lee, Rae Skenandore, Clorissa Santiago, Jen Falck, Candice Skenandore
- 4/14/17:** *Work meeting w/ DCF.* Attendees include: Heather Lee, Jennifer Berg-Hargrove, Candice Skenandore, Clorissa Santiago, Jennifer Webster, Michelle Gordon, Rich VanBoxtel, Nathan King, David P. Jordan, Jen Falck, George Skenandore, Rae Skenandore, Tania Cornelius, Stephanie Lozano, Tehassi Hill, Brandon Stevens, Cathy Bachhuber
- 4/17/17:** *Work meeting held.* Attendees include: Jennifer Berg-Hargrove, David P. Jordan, Rich Vanboxtel, Jennifer Webster, Brandon Stevens, Nathan King, Ralinda Ninham-Lamberies, Heather Lee, Hon. Marcus Zelenski, Michelle Gordon, Jen Falck, Fawn Billie, Tehassi Hill, RC Metoxen, Clorissa Santiago, Candice Skenandore
- 4/19/17:** *Work meeting w/ OCPB.* Attendees include: Carol Silva, Evander Delgado, Jeanette Ninham, Wes Martin, Lois Strong, Fawn Billie, Jennifer Webster, Candice Skenandore, Clorissa Santiago, Rae Skenandore, Tehassi Hill, David P. Jordan, Brandon Stevens, Lisa Liggins, Jo Anne House, Melinda K. Danforth
- 4/21/17:** *Work meeting w/ ICW & Trust Enrollments.* Attendees include: Cheryl Skolaski, Susan White, Robert Collins, Bonnie Pigman, Jennifer Berg-Hargrove, Candice Skenandore, Clorissa Santiago, Heather Lee, Rae Skenandore, Cathy Bachhuber, Michelle Gordon
- 4/21/17:** *Work meeting w/ ICW.* Attendees include: Michelle Gordon, Fawn Billie, Jennifer Berg-Hargrove, Rae Skenandore, Cathy Bachhuber, Candice Skenandore, Clorissa Santiago, Heather Lee
- 4/21/17:** *Work meeting w/ ICW, OFC & Court Administrator.* Attendees include: Candice Skenandore, Clorissa Santiago, Jennifer Berg Hargrove, Rae Skenandore, Raeann Skenandore, Heather Lee, Trina Schulyer, Fawn Billie
- 4/21/17:** *Work meeting (Presentation).* Attendees include: Candice Skenandore, Clorissa Santiago, Veronica Bruesch, Nasbah Hill, Heather Vandenlangenberg, Roxann Pazdera, Pixie DeGrand, Marcus Zelenski, Trina Schuyler, Lois Strong, Raeann Skenandore, Jodie Skenandore, Lea Padron-Plass, George Skenandore, Tsyoshaht Delgado, Heather Lee, Jennifer Berg-Hargrove, Rae Skenandore, Fawn Billie, Wes Martin
- 4/24/17:** *Work Meeting w/ OCPB.* Wes Martin, Lois Strong, Melinda K. Danforth, Evander Delgado, Jen Falck
- 5/2/17:** *Work meeting w/ ICW & Finance:* Jennifer Berg-Hargrove, Rae Skenandore, Clorissa Santiago, Candice Skenandore
- 5/3/17:** *Work meeting w/ OCPB:* Dale Powless, Wes Martin, Candice Skenandore, Clorissa Santiago, Melinda K. Danforth, Jeanette Ninham, Evander Delgado
- 5/9/17:** *Work meeting w/ ICW:* George Skenandore, Jennifer Berg-Hargrove, Heather Lee, Candice Skenandore, Clorissa Santiago, Rae Skenandore
- 5/12/17:** *Work meeting w/ LOC, OFC & ICW:* Attendees include: Candice Skenandore, Clorissa Santiago, Jennifer Falck, David P. Jordan, Tehassi Hill, Fawn Billie, Jennifer Webster, Jennifer Berg-Hargrove, Heather Lee, Rae Skenandore, Hon. Marcus Zelenski, Pixie DeGrand, Cathy Bachhuber, George Skenandore, Tsyoshaht C. Delgado.
- 5/17/17 LOC:** Motion by Jennifer Webster to accept the public meeting comments and defer to a work meeting; seconded by Fawn Billie. Motion carried unanimously.
- 5/17/17:** Work Meeting. Present: Clorissa Santiago, Candice Skenandore, Jen Falck, Tehassi Hill, David P. Jordan, Jennifer Webster, Fawn Billie. LOC reviewed and considered comments.
- 5/18/17:** *Work meeting w/ ICW & Housing:* Scott Denny, Krystal John, Heather Lee, Jennifer Berg-Hargrove, Clorissa Santiago, Candice Skenandore.
- 5/18/17:** *Work Meeting.* Present: Clorissa Santiago, Candice Skenandore, Jen Falck, Tehassi Hill, David P. Jordan, Jennifer Webster, Fawn Billie, Cathy Bachhuber, Danelle Wilson. LOC reviewed and considered comments.

**6/1/17:**      *Work Meeting with the OCPB.* Present: Clorissa Santiago, Candice Skenandore, Jen Falck, Brandon Stevens, Tehassi Hill, David P. Jordan, Fawn Billie, Patricia King, Melinda K. Danforth, Carmenita Escamea.

**6/2/17:**      *Work Meeting with ICW & OFC.* Present: Clorissa Santiago, Candice Skenandore, Michelle Gordon, Jennifer Berg-Hargrove, Heather Lee, Fawn Billie, Rae Skenandore, Hon. Marcus Zelenski, Pixie DeGrand, Tsyoshaht C. Delgado.

**Next Steps:**

- Approve the public meeting comment review memorandum and updated draft; and
- Direct the Legislative Reference Office to update the legislative analysis.





TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney  
DATE: June 7, 2017  
RE: Child Welfare Law: Public Meeting Comment Review

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On May 4, 2017, a public meeting was held regarding the proposed Child Welfare law (“the Law”). This memorandum is submitted as a review of the oral and written comments received within the public meeting and public comment period. The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

On May 17, 2017, May 18, 2017 and May 25, 2017 the Legislative Operating Committee held work meetings to review and consider the public comments.

#### **Comments 1 through 2 – Name of Child Welfare law:**

**Wes Martin (oral):** Thank you, my name is Wes Martin, and I was the original motioner on this matter back four years last January for creating a Children’s Code. And that is one of the objectives, wondering how it got to this change of the name to I think Welfare law as opposed to as it was originally intended to be a Children’s Code like other tribes – Oneida Children’s Code – and labeled that way and all of a sudden we now got a law.

**Jeanette Ninham (written):** Also that the Name be changed back to the Children’s Code (same as all the other tribes in WI) not as the non-tribal people would reference the Indian People.

#### ***Response***

The name of the law was changed from the “Children’s Code” to the “Child Welfare law” based on the LOC’s directive that moving forward all legislation would be categorized as laws, and not codes or policies. The name “Child Welfare” was used based on the definition of welfare as, “the health, happiness, and fortunes of a person or group.” The intent of the law is to promote and improve the welfare of Oneida children and families.

The name of a particular piece of legislation is a policy determination for the LOC. The LOC could address this comment in the following ways:

1. Keep the title of this proposed law as, “Child Welfare law;”
2. Revert the title of this proposed law back to, “Children’s Code;”
3. Determine a new title.

#### ***LOC Consideration***



The LOC reconsidered their policy decision that all legislation should be classified as laws moving forward. The LOC took time to brainstorm other possible titles for the Law, including the “Child Protection law”, but decided to revert the title back to the Children’s Code.

The LOC wants to be receptive to input from the community and does not want to use the title “Child Welfare law” if the term welfare has a negative connotation for members of the community.

Moving forward this legislation will be known as the Children’s Code.

### **Comments 3 through 4– General Comments and Background on the Oneida Child Protection Board’s Prior Draft:**

**Wes Martin (oral):** I am here because I’ve been on the Oneida Child Protection Board going on seven, eight years, something like that. And now I understand this Code, I’m not opposed to that, but one of the things I am opposed to is implementation of this Code as the way it is. Over the years we have drafted, originally drafted a Code from the Child Protection Board that was presented three or four years ago. And the drafters of that Code, along with us, was Andy Pyatskowit and Rob Orcutt, who were both tribal. Andy was a practitioner in tribal court for several tribes as a prosecutor, besides working for Oneida. Rob was instrumental, he was a practitioner for tribal court in Menominee and I believe at Stockbridge. But they were practitioners.

**Jeanette Ninham (written):** I have been a board member for 20 years and have seen many families come to this board for help or maybe just someone to listen. The OCPB consider this responsibility as the highest form of consciousness in building a nation of people, families and children. In May of 1997 the budget guidelines that were implemented listed the OCPB as one of the priorities of the nation. There have been other children codes wrote, one in 1983 and one submitted by Council Delgado, so the child Protection board requested to write and submit a new draft in 2008. It was determined that in Council Delgado code a lot of the information was taken from the state code chapter 48 children’s code as is this code also. The original law that was submitted by the Child Protection board in 2012 was written by 6 Elders and two Oneida attorneys.

### ***Response***

The commenters provide background on their participation with the Oneida Child Protective Board (OCPB) and the OCPB’s participation in the legislative process. The OCPB submitted a proposed Children’s Code in February 2012. The LOC reviewed the proposed Children’s Code by the OCPB and had a legislative analysis completed for April 18, 2012. At the April 18, 2012, meeting the LOC directed that the Children’s Code with analysis be forwarded to the OCPB and requested that the OCPB provide responses, concerns or suggestions in writing to be brought back before the LOC within forty-five (45) days. The record does not reflect that this action by the OCPB occurred. The LOC then later made the determination to not move forward with the OCPB’s proposed Children’s Code, and instead work on the development of a new draft. In

December 2016, the LOC made the determination to move forward with the development of the current proposed Law.

The commenter also discusses the experience of the two (2) attorneys the OCPB utilized to assist in the drafting of their proposed Children's Code. The current proposed Child Welfare law was assigned a sponsor from the Legislative Operating Committee, as well as a legislative drafting attorney and legislative analyst from the Legislative Reference Office (LRO). Additionally, the following entities were consulted in the development of the proposed Child Welfare law:

1. Oneida Law Office;
2. Oneida Family Court;
3. Indian Child Welfare Department;
4. Child Support Department;
5. Finance Department;
6. Oneida Police Department;
7. Oneida Child Protective Board;
8. Oneida Nation Judiciary;
9. Legislative Affairs Department;
10. Trust Enrollment Committee; and
11. Wisconsin Department of Children and Families.

During the development of the proposed Law fourteen (14) subject matter experts were consulted, twenty three (23) laws and documents related to child welfare issues were reviewed, twenty five (25) work meetings were held, and correspondence was sent out to six (6) Wisconsin tribes.

The research, consultation and collaboration involved in the development of this Law has led the Legislative Reference Office to believe that the law was adequately developed and the best child welfare processes and procedures are contained in the Law.

There is no recommended revision to the Law based on this comment. The commenter requests the LOC review whether the current Law was adequately developed, or if more work on the development of the Law is necessary.

### ***LOC Consideration***

The LOC agrees the Law was adequately prepared and that this draft is ready to move forward for adoption. The LOC discussed the great amount of collaboration between departments that occurred during the development of this Law.

### **Comment 5 – General Comment Regarding the Involvement and Experience of OCPB members:**

**Wes Martin (oral):** There was other parts in it. We as the Board, have only finally got to talk with the LOC people the last two weeks over this we have as a Board. I've been a practitioner for thirty five years in tribal court. I've helped develop codes, I've helped work with a tribal judge, I

was a tribal advocate, I was a tribal presenter, I was a tribal petitioner for the Ho-Chunk Nation, and knew the process in tribal court and what to do.

### ***Response***

The commenter expresses dissatisfaction with the OCPB's involvement in the development of the Law. In February of 2012, the OCPB submitted a request to create a Children's Code. The LOC reviewed the proposed Children's Code by the OCPB and had a legislative analysis completed for April 18, 2012. At the April 18, 2012, meeting the LOC directed that the Children's Code with analysis be forwarded to the OCPB and requested that the OCPB provide responses, concerns or suggestions in writing to be brought back before the LOC within forty-five (45) days. The record does not reflect that this action by the OCPB occurred. The LOC then later made the determination to not move forward with the OCPB's proposed Children's Code, and instead work on the development of a new draft. An Oneida Law Office attorney, on behalf of the LOC, was developing a Children's Code when in December 2016 the LOC received a draft Children's Code as a writing sample. On December 19, 2016, the LOC held a work meeting to discuss this item and made the decision to reassign this piece of legislation back to an attorney and analyst in the LRO, and to merge the two drafts – the writing sample the LOC received and the current draft that was being developed – and proceed with the development of the Law.

Communication between the LOC and the OCPB has progressed as follows since the December 19, 2016, work meeting:

- On February 22, 2017, the LOC Chairperson, Brandon Stevens, contacted the OCPB informing them that the LOC is currently working on a new Children's Code as a high priority and that the OCPB will soon be receiving an invitation for a work meeting to discuss this matter;
- On February 23, 2017, the LRO Director, Jennifer Falck, provided the OCPB with options for possible times to schedule the work meeting;
- On February 24, the first draft of the current Law was included in the 3/1/17 LOC meeting packet, which was forwarded to the OCPB;
- On February 27, 2017, the OCPB requested a redline version of the proposed Law, but was informed on the same day that no redline version existed but the OCPB should feel free to contact the LRO with any questions or concerns;
- On March 1, 2017, the Law was on the LOC agenda and a presentation was given on the Law. Some OCPB members were in attendance;
- On March 3, 2017, the OCPB requested the work meeting to occur on April 10, 2017.
- The work meeting was then scheduled for April 10, 2017;
- The work meeting was canceled by the OCPB on April 10, 2017, and rescheduled for April 19, 2017;
- The work meeting was held on April 19, 2017;
- At the April 19, 2017, work meeting the OCPB was invited to attend a presentation regarding the proposed Law on April 21, 2017, to learn more about the Law and have an opportunity to ask questions and express concerns;
- On April 21, 2017, a presentation was given on the Law. Some OCPB members were in attendance and were able to ask questions regarding the Law.
- LRO staff attended a work meetings with the OCPB on April 24, 2017;

- LRO staff attended a work meeting with the OCPD on May 3, 2017; and
- OCPB members were encouraged to participate in the Child Welfare law public meeting held on May 4, 2017.
- We received public comment from three (3) OCPB members.

The commenters also discuss his experience and involvement with various tribes. There is no recommended revision based on this comment.

### ***LOC Consideration***

The LOC discussed the communication that occurred between the LOC and the OCPB during the recent development of the Law. The LOC requested revisions to the response in this memorandum to reflect the following:

1. On March 1, 2017, the Law was on the LOC agenda. A presentation was given on the Law during that meeting and there were OCPB members in attendance.
2. On April 21, 2017, a presentation on the Law was given. Some OCPB members were in attendance and were able to ask questions regarding the Law.

The LOC believes adequate communication occurred between the OCPB and the LOC.

### **Comments 6 through 8 – Objections to the Dissolution of the Oneida Child Protective Board:**

**Wes Martin (written):** Oneida Child Protection Board remain in place for 2 years after implementation of the Children Code. This will give some coincidence what the OCPB was involved with for out of home placements of Oneida Children.

**Julie Denny (oral):** And I strongly oppose what's in there, what's being proposed right now, is the removal of the Indian Child Welfare Board. They were the only people that we could go to that would really listen to us and find out what's not happening and what should be happening, you know that could guide us, you know. We just didn't feel the trust in the beginning like we felt we should have.

I mean that's, I'm not comfortable with that and I'm not comfortable with the removal of the Indian Child Welfare Board. I think their oversight is really key, you know they can facilitate something that might be wrong and bring that to the tribal side and say this needs to be fine-tuned. I think their role is imperative. I just don't feel comfortable with them being removed from this process at all. And that's where I stand today. And I thank you for your time.

**Jeanette Ninham (written):** Last and finally what about all the other decisions that will need to be made in the state courts? For years the Child Protective board made the decision on where a child should be placed with and we continued to request family even when the worker had already given up.

*Note: See the end of the memorandum for additional comments regarding support for the dissolution of the OCPB.*

## *Response*

The commenters express their objection to the dissolution of the OCPB, and their desire to have the OCPB remain in place for an additional two (2) years after the Law is implemented.

The OCPB was created by the Oneida Business Committee by resolution BC-09-25-81 to represent the interests of Oneida children and accept the delegation of authority and responsibility conferred on the Nation by ICWA. The creation of the OCPB was necessary because the Nation did not have an ICW Department or a Judiciary to take on the responsibility of handling child welfare cases. The OCPB has played an integral and important role in child welfare cases for the Nation, and it is because of this hard work that the Nation is at a point where it is capable of taking jurisdiction over child welfare cases.

The Nation now has the proper infrastructure in place to take the authority and responsibility over child welfare cases and adopt the Child Welfare law. The Nation's ICW Department workers, Oneida Law Office attorneys, and Family Court judge(s) are highly trained subject matter experts on child welfare issues and will ensure that placement preferences and other standards are properly followed. In addition to the ICW Department, Oneida Law Office attorneys and Family Court judges, the Nation provides guardians ad litem to the children and allows for parents to be represented by advocates; these provisions will ensure the best interests of the child and the Nation as a whole are adequately represented.

Although it was not easy, the decision to dissolve the OCPB was made because with the implementation of the new processes and procedures contained in the Child Welfare law, it was determined that the OCPB will be providing a duplication of services and will no longer be serving an effective or efficient role. The knowledge and experience of the current members of the OCPB is an invaluable resource, but the Nation must consider not only the role the OCPB plays now, but what role and value the OCPB can provide the Nation in the future. Moving forward, the information the OCPB supplies now and will supply in the future can be provided by other departments of the Nation, such as the Trust Enrollments Department. The Trust Enrollment Department maintains accurate and complete records of enrollment and family trees. The Trust Enrollment Department will be entering into a memorandum of agreement and/or understanding with the ICW Department so that information can be shared.

The LOC believes that the implementation of the Child Welfare law, and the new process and procedures by which child welfare cases will be handled, is in the best interest of Oneida children and families. The goal of the Child Welfare law is to bring and maintain Oneida children and families closer to the Nation's resources which may result in a higher percentage of reunifications and lower the number of unstable families.

For those ICWA cases that do not fall under the jurisdiction of the Law, the current ICWA policy - including the placement preferences, definition for extended family and other standards the OCPB currently operates under - will be reincorporated into a resolution requiring the Nation's Indian Child Welfare Department and Oneida Law Office attorney to ensure that the placement

preferences and all standards are being followed. This allows all decisions and recommendations to be made by subject matter experts and prevents a duplication of services.

When the Oneida Law Office receives an ICWA notification they will inform the ICW Department to begin an investigation. The ICW Department will then use the placement preferences and other standards to make a recommendation for that child, and the Oneida Law Office attorney will bring that recommendation to the court hearing the child's case. The ICW Department will be entering into memorandums of agreement and/or understanding with the Trust Enrollment Committee to ensure that information can be more easily shared between the ICW Department and the Trust Enrollment Department.

In regard to the comment by Julie Denny, she additionally stated, *"I come before you today as a grandmother, whose, I'll try to keep my emotions in check, a grandmother who lost five of her grandkids into this child protection system," "when those five kids were removed and we stood at out driveways crying and saying goodbye to them and didn't know where they were going," and "it took like six months before we even thought about speaking reunification of the children back with the parents and come up with a plan."* These comments lead to the assumption that as a grandmother who did not have placement of the grandchildren she not a party to the case she was speaking of during her oral testimony. It is important to note that due to the nature of child welfare matters, information regarding details of a case cannot be released to anyone that is not a party in the case. This would explain the inability of the ICW Department and the County Child Protective Services department to share information with the commenter. The comments regarding OCPB being the only entity that shared information with her is a cause for concern and question, due to the fact that the OCPB is also supposed to adhere to strict confidentiality standards. More details would be necessary in order to draw a conclusion on the matter.

There is no recommended revision based on this comment.

### ***LOC Consideration***

The LOC confirmed their decision that the OCPB should be dissolved due to the fact that the OCPB would be providing an inefficient and ineffective duplication of services. Discussion occurred surrounding the fact that the OCPB played an integral role before the Nation acquired a Judiciary or ICW Department, but now that the Nation has that infrastructure in place filled with experienced and trained subject matter experts the role of the OCPB is no longer needed.

The LOC spent much time discussing that the purpose and goals of this Law, which is to bring and maintain Oneida children and families closer to the Nation's resources so that the Nation can strive for a higher percentage of reunifications and lower the number of out-of-home placements. The LOC believes the adoption of the methods and procedures contained in the Law and the dissolution of the OCPB is in the best interest of the Nation.

**Comments 9 through 10 – General Comments Regarding Experience and Supervision of the ICW Department :**



**Nasbah Hill (written):** My name is Nasbah Hill and I am currently an Indian Child Welfare Social Worker. I have interned with the ICW department and worked with ICW since 2012. My family roots also stem from the Oneida community. I was also licensed to become a foster parent to take in two Oneida relative children who were in the foster care system. My perspective of the Oneida Child Welfare law is one that is reflected from the array of my different experiences-both professional and personal.

People may have experienced ICW in different ways. Some experiences may have been positive and some may have been negative. I work with the ICW team that is comprised of six exceptional workers who all have a master level education, with the exception of one worker who has a bachelor level degree with 18 years plus experience as a social worker, specifically to ICW matters. I can say with conviction that we all wear our hearts on our sleeve when it comes to the work that we do for the Oneida children and families. It is absolutely heartbreaking to see the break-up of Indian families. I have strongly advocated many times for Oneida children and families who were involved in the child welfare system, to be reunified, or to be able to stay connected to their families if possible.

**Jeanette Ninham (written):** There needs to be an Elder board or a board to oversee the recommendation of the workers to make sure all avenues are checked and we continue to consistently look for family and never give up. Many times this board has given family names and contacts to the workers for them to call. There needs to be checks and balances when it comes to our children and families. I am asking that an over sight team/board be put in place to hear all the decision of the attorney/Indian child welfare worker on placement of children in state courts. Some tribes have Elders placed in there ICW department.

### ***Response***

One commenter discusses the vast experience and expertise of the ICW Department, while the other commenter discusses the desire to have an Elder Board to oversee the ICW Department.

Many Children's Codes were reviewed in the development of this Law, but only one Children's Code had an entity that was similar to the OCPB. The use of a Child Protective Board or Elder Board to supervise the ICW Department and Child Welfare attorney is an unnecessary, inefficient, and ineffective utilization of the resources of the Nation because that Board would be providing a duplication of services.

The ICW Department and the Oneida Law Office are filled with educated, experienced, child welfare subject matter experts. The Law will mandate that all placement preferences, and other standards for child welfare matters be followed by the ICW Department and the Oneida Law Office attorneys. Checks and balances are already in place within the ICW Department to ensure that its workers are complying with their mandated duties and responsibilities. Additionally, throughout the entire child welfare process, the Family Court will be reviewing if the ICW Department Workers and Nation's Child Welfare attorney are meeting the standards required by the Law.

It is unnecessary to have the OCPB or an Elders Board because now the ICW Department will enter into a memorandum of agreement and/or understanding with the Trust Enrollment Department and/or Committee to ensure that the most accurate enrollment and family information is obtained. In the past the OCPB provided information on families, but there are more and more new generations of families coming up that the OCPB is not as knowledgeable about, so it is clear the OCPB is not providing information that is not already available with the Trust Enrollment Department. In a meeting between the LRO and the OCPB, an OCPB member expressed the fact that the more experienced members of the OCPB are no longer recognizing as many family names as they once did.

There is no recommended revision because it is clear the ICW Department is qualified and experienced and does not need the supervision of the OCPB or an Elder Board. The LOC can consider whether an Elder Board is needed to supervise the ICW Department and the Nation's Child Welfare attorney.

### ***LOC Consideration***

The LOC considered whether the OCPB or an Elders Board should be in place to supervise the work and decisions of the ICW Department and the Nation's Child Welfare attorney. The LOC came to the determination that a reiteration of the OCPB or an Elders Board should not be included. The LOC discussed the Confederated Salish and Kootenai Tribes, which utilizes an Elders Board, however this board is advisory and has no decision making authority. The LOC also discussed the subject matter expertise and experience of the ICW Department and the attorneys in the Oneida Law Office and decided an Elders Board to supervise the subject matter experts would be unnecessary.

### **Comments 11 through 12 – General Comments Regarding the Law's Similarities to the Wisconsin Children's Code:**

**Wes Martin (oral):** All I read in this one is references to the state codes, state law.

**Julie Denny (written):** You know I don't fully agree with implementing so much of the state's rules that they have. You know, this is our, I agree with your goals, keep our kids here.

### ***Response***

Both commenters express concern that the Law only references Wisconsin state law. The Wisconsin Children's Code was used as a reference in the development of this Law along with other codes and laws regarding the welfare of children from various tribes, including but not limited to:

- Confederated Salish and Kootenai Tribes;
- White Earth Ojibwe;
- Ho Chunk Nation;
- Forest County Potawatomi;
- Lac du Flambeau;
- Red Cliff Band of Lake Superior Chippewa;



- Shoshone and Arapho;
- St. Croix Chippewa Indians of Wisconsin; and
- Stockbridge-Munsee.

The review of a vast variety of codes and laws regarding the welfare of children allowed for the opportunity to obtain insight and knowledge on a variety of methods and processes to handle child welfare issues so that the best processes and procedures could be developed into Oneida's Law.

Some consistency with Wisconsin law is necessary due to the nature of child welfare issues and the fact that cases have the potential to transfer between Brown County and Outagamie County and the Nation's Family Court. Consistency with Wisconsin law allows for a more fluid transfer of cases between the jurisdictions which could potentially alleviate some burden off of the families and children to adjust to their case being transferred to a different jurisdiction guided by a different law.

Although the Law does share some similarities with the Wisconsin Children's Code and other tribal Children's Codes, there are many features of the Law that make it unique to the Oneida Nation. This includes, but is not limited to, the following:

- The law requires that the child's culture, heritage and traditions are considered, respected, and encouraged. *[see Child Welfare law section 708.3-1(e), 708.8-3(b), 708.30-4, 708.37-3(b), 708.39-3(b)]*;
- The law incorporates an order of placement preferences that will help protect the best interests of Oneida children and promote the stability and security of the Oneida Nation and families. *[see Child Welfare law section 708.10]*;
- The law allows for customary adoptions, which have the purpose not to permanently deprive the child of connections to, or knowledge of, the child's biological family, but to provide the child a permanent home. Customary adoption does not extinguish the relationship between the child and the child's biological extended family, and even allows for biological parents to obtain certain residual rights such as the right to communication and visitation. *[see Child Welfare law section 708.39.2]*;
- The law allows for peacemaking in addition to mediation. *[see Child Welfare law section 708.43-1]*;
- It is the intent of the Governmental Services Division to include a Cultural Wellness Facilitator and Healer in the implementation of this law for the purpose of providing wellness sessions to families utilizing culturally based and appropriate and complementary healing methods, as well as providing training on Oneida culture and tradition to families, guardians ad litem, and foster homes.

Most importantly, despite what outside source the Law may resemble, the adoption of the Law is providing the Nation an opportunity to express its sovereignty and take jurisdiction over child welfare cases involving Oneida children. This will allow the Oneida Nation to set the standards and requirements for child welfare issues, allows for those cases involving Oneida children and families to be brought back to the Reservation, be processed primarily by the Oneida Indian Child Welfare Department, and heard in the Oneida Family Court. The goal of developing the Law was to bring and maintain Oneida children and their families closer to the Nation's

resources which may result in a higher percentage of reunifications and lower the number of unstable families.

The LOC may consider including the role of the Cultural Wellness Facilitator and Healer in the Law. The following language could be utilized:

**708.10 Cultural Wellness Facilitator and Healer**

708.10-1. The Department may utilize a Cultural Wellness Facilitator and Healer throughout all child welfare proceedings.

708.10-2. The Cultural Wellness Facilitator and Healer may provide:

- (a) wellness sessions utilizing culturally based and appropriate healing methods;
- (b) training on Oneida culture, language and traditions; and
- (c) and any other service that may be necessary.

708.20-5(b) A treatment plan may include recommendations and the dispositional order may require the child's parent, guardian and legal custodian to participate in:

- (1) Outpatient mental health treatment;
- (2) Substance abuse treatment;
- (3) Anger management;
- (4) Individual or family counseling;
- (5) Parent training and education; ~~and/or~~
- (6) Cultural wellness treatment and training; and/or
- (67) Any other treatment as deemed appropriate by the Court.

***LOC Consideration***

The LOC believes the inclusion of a Cultural Wellness Facilitator and Healer in child welfare matters would be a benefit to the Nation and its families. The LOC made the decision to add the recommended language regarding the Cultural Wellness Facilitator and Healer to the Law.

The LOC directed the LRO to communicate with the Governmental Services Division Director about performing an assessment to see if an additional Cultural Wellness Facilitator and Healer will be necessary to include in the financial analysis and implementation plan, or if the two Cultural Wellness Facilitator and Healers currently employed at Cultural Heritage would be able to provide the necessary services.

**Comments 13 through 15 – General Comments Regarding Confusion:**

**Julie Denny (oral):** Thank you. I come before you today as a grandmother, whose, I'll try to keep my emotions in check, a grandmother who lost five of her grandkids into this child protection system. And I agree with, wholeheartedly with what Wes has said that, I've read the draft that you guys have and I didn't understand a whole lot of what I've read.

**Jeanette Ninham (written):** This law is not for the lay person, it is confusing for a person with a college degree.

**Nasbah Hill (written):** The draft of the child welfare law is very thorough, and it shows that research was done prior to the law being written. Contributions were made by different professionals in the child welfare system.

### ***Response***

Some commenters express their concern that the Law is too confusing for the average person to read and understand, and other commenters express their appreciation for the thoroughness of the Law. It is understandable that the Law appears complicated because the Law contains very detailed standards and procedures, but that detail in the Law is necessary to provide a consistent, fair, and transparent application of the law to every member of the Nation who may come under its jurisdiction. Although it appears complicated, the detail is included for the benefit of the user. The thorough details provide the reader with clear statements regarding the expectations and responsibilities of everyone person involved in child welfare cases, and clear standards and procedures that must be followed for each case.

To combat any potential confusion regarding the Law, the LOC plans on providing community meetings to educate the public on the processes, standards and expectations contained in the Law. There has also been discussion of the possible development of a manual or guidebook for individuals that would explain to the reader, in a more concise and user-friendly manner, what the process and expectations involved in a child welfare case are and where to obtain additional information.

There are no recommended revisions to the Law based on these comments. It is for the LOC to determine what further, if any, outreach or education for the public should occur.

### ***LOC Consideration***

The LOC determined that no revisions are necessary to address this comment. The LOC discussed the importance of including detail in the Law. The details serve a purpose by outlining the process, procedures, responsibilities and roles required by the Law, which is beneficial to the reader. The inclusion of the details in the Law was also intended to help ease judicial interpretation of child welfare proceedings so consistent and clear determinations can be made.

The LOC directed the LRO to consult with the Oneida Family Court on the development of a user-friendly manual regarding matters that will be heard in the Family Court.

### **Comments 16 through 18 – Concerns about Prevention:**

**Wes Martin (oral):** And the other provisions, like when you, like in the state process and doing it, and this is, NICWA will attest to it. That if you had a ladder, that ladder if you look at it, is the first thing state court's like to do is removal. And that's to take the removal out of it, and take people, and put kids out of the thing. But their theory is, and what we want is that should be the last resort. The ladder should be upside down. There should be intervention, prevention, and the removal is the last resort. There has to be emergency removal, but you know, is that, this is a

Oneida Children's Code for its children. And it should be treated with that respect for the kids and the families. Too many kids have been lost because of that removal and conditions put upon them. So I know my five minutes are up, and I appreciate.

**Julie Denny (oral):** But I know we're in this system but how do we get our kids back much sooner and it took like six months before we even thought about speaking reunification of the children back with the parents and come up with a plan, so I think what Wes has said is really true. We need to look at more of the intervention and the removal as a last resort. And just as FYI, all of the things that have supposedly stated about my grandkids and their parents, nothing was founded, you know, but yet they're in this system. And if we're going to put this in place, that's where our strength needs to be, upfront with these parents not months down the road where okay now were going to lay out a safety plan for your kids to come back and were going to say you have to do this and that.

**Jeanette Ninham (written):** Line 292 ICWD duties and responsibilities, at what point will preventive services are offered? It should be first right at the top.

### ***Response***

The commenters are expressing their desire for the Law to focus more on prevention and intervention before the removal of a child from the home. The commenters are correct in stating that prevention and intervention are important aspects to any child welfare case. Much information regarding prevention is not included in this Law, but that does not mean a strong focus on prevention is not occurring within the Nation. The Law does not discuss the efforts that should be made towards prevention because the Nation does not have jurisdiction under this law until there is a child in need of protection or services. When the threshold is met for a child to be in need of protection or services, you are beyond the point of only providing preventative services and action must be taken. The ICW Department does have preventative services and resources that they can provide to families before the Child Welfare law would take effect.

Additionally, the adoption of the Law would allow the Nation discretion on standards for when to screen in a case. The Wisconsin Department of Children and Families has stated that on average tribes screen in child welfare cases more frequently than the counties do. This means that the ICW department would have the authority to determine when a case should be opened, allowing the ICW Department to potentially provide greater services to more families a lot sooner. This has the potential to result in more in-home care and prevent the child welfare challenges the families are facing from escalating to the point where a child has to be removed from the home.

The purpose of the Law is to strengthen family life by assisting parents in fulfilling their responsibilities while providing for the welfare, care, and protection of Oneida children through the preservation of the family unit, although this Law recognizes that in some circumstances it may be in the child's best interest to not be at home with his or her family. The Nation's goal and focus is always reunification of the family, even if that means the child has to be temporarily removed from the home so that the parents can focus on healing themselves and fulfilling their responsibilities.

There is no recommended revision based on these comments.

### ***LOC Consideration***

The LOC discussed prevention and the fact that preventative services are currently provided. The LOC determined that there are no revisions necessary based on the comments because the Law does not take effect until the matter is beyond the point where only preventative measures can be utilized. The LOC understands that perhaps the community is unaware of the prevention services that are currently being offered by the ICW Department.

The LOC directed the LRO to contact the ICW Department to determine a list of all available preventative services so that this information can be included in the community meetings.

### **Comments 19 through 24 – General Comments on the Implementation of this Law:**

**Wes Martin (oral):** And I'm not threatening this board or anyone else, but unless, if this thing is trying to, I will personally do my best to do what I can because I don't think its ready to go and be implemented. I know there is time frames about implementation but I think that these things need to be corrected if it is. And I want it, I am not against the Children's Code. I want it. I've been waiting for it twenty, thirty years, but the way it is right now I think it could be a detriment to the Tribe down the road unless these other steps are taken first. Thank you.

**Nasbah Hill (written):** I feel that my team is very cognizant of what needs to happen in order for our department to take on this Child Welfare law. There is formality and a process that needs to happen to prepare our department for handling child protection matters. Our department is aware that while the law may be adopted sooner, it could take several years before this law is put into practice.

**Melinda K. Danforth (written):** Lastly, I would like to express this Law be adopted ONLY when we can state the Oneida Nation can implement it BETTER than the other counties. Shame on any Oneida Business Committee (OBC) member that approves this and an Oneida member is hindered in the process because we were NOT prepared. All we need is more negative publicity, especially if it involves our children. I appreciate the opportunity to provide my written comments. You may contact me through my personal email account if necessary.

**Jeanette Ninham (written):** There are many concerns with adopting and implementing this law.

**Jeanette Ninham (written):** I am requesting (pleading) that this law NOT be implemented until an implementation plan is in place and approved by the ICW department and the Child Protective board.

**Jeanette Ninham (written):** There should be an order of what is needed to make this fail proof for our children and families (plan).

### ***Response***

The commenters express their opinions on the status of the Law's development and implementation.

The philosophy behind the development of this Law has always been that this Law should only be adopted if it can provide a better service to Oneida children and families than what they are currently receiving in the county system. Due to the importance in providing a better service to Oneida children and families the LRO has had numerous work meetings with all affected entities to discuss implementation and what infrastructure, personnel, training, and funding will be required to properly implement this Law. The LRO and the Sponsor met with the following entities:

- Oneida Family Court;
- ICW Department;
- Nation's Child Support Agency;
- Trust Enrollments Department;
- Judiciary Court Administrator;
- Community Support;
- Oneida Police Department;
- Finance Department; and
- Wisconsin Department of Children & Families.

A detailed implementation plan is currently being developed by the LOC. Implementation will begin once the Law is adopted by the Oneida Business Committee. The affected entities that require new staff for the implementation of this Law will place the required new positions into the Fiscal Year (FY) 2018 Budget. Once the budget is approved, those entities will begin hiring and training new staff. All implementation measures will need to be completed within one year after the new staff is hired with the adoption of the FY 2018 Budget, because at that time the Law will become effective and the Nation will begin exercising its jurisdiction over child welfare matters.

Some information regarding implementation contained in that plan will include:

1. ICW Department

- a. *Personnel.* The ICW department believes the following staff is needed to properly implement the Law. This chart does not include the addition of a Cultural Wellness Facilitator and Healer, and a paralegal, which the ICW Department intends to include in the implementation of this Law.

Position	Current	Needed	Total
Director	1 Family Support Services	1 ICW	1 ICW, 1 Family Support
Supervisor	1	1	1
Intake Worker (in house)	0 (does all intake duties)	1	1
Intake Worker (call 24/7)	0	2	2
On-going Worker	4	2	6
Parenting Specialist	1	1	2
Foster Care Coordinator	1	1	2
Security Officer	0	1	1



- b. *Infrastructure.* The ICW Department has reviewed space and building information to ensure they will have enough room to house all new requested staff, and has explored ways to ensure the building is safe for all families and staff. The ICW Department has also began discussions on utilizing space so that the Department can provide a safe place that can be utilized for supervised visitations.
  - c. *Training.* The ICW Department recognizes that training for new and current staff will improve the quality of service they can provide to families and children. The ICW Department hopes to hire staff during the implementation time period, which would allow all staff to be properly trained before the Law becomes effective.
2. Oneida Family Court
- a. *Personnel.* The Oneida Family Court will require the following staff to properly implement this Law:

Position	Current	Needed	Total
OFC Judge	1	1	2
OFC Clerk	1	1	2
Security	1	0.5*	1.5*

\*Judiciary is adding the part time security officer whether or not this Law is adopted.

- b. *Training.* The Family Court wishes to hire the new staff with enough time to allow all staff, new and current, to obtain training on child welfare matters and proceedings so that the best service can be provided to Oneida children and families. The Family Court will also be working on the recruitment of guardians ad litem and will be developing a new training for guardians ad litem specific to child welfare matters.
- c. *Infrastructure.* The Family Court believes that there are no major infrastructure needs required to implement the Law in regards to the space and Oneida Judiciary building. There are some measures to improve the building, like increased security measures and an addition of video conferencing equipment, that will assist the Family Court in providing adequate service to families and children.

Additionally, the implementation plan for the Law includes the development of various memorandums of agreement and/or understanding between the ICW Department and the following entities:

1. Trust Enrollment Committee and/or Department;
2. Oneida Police Department;
3. Nation's Child Support Agency;
4. The appropriate counties;
5. And any other appropriate department.

The implementation plan also includes the development and negotiation of 161 Agreements with the appropriate counties to discuss financial responsibilities.

There is no recommended revision based on these comments. The LOC can consider whether any other information regarding implementation is needed.

### ***LOC Consideration***

The LOC determined that planning regarding implementation has been occurring throughout the recent development of this Law by the numerous work meetings with various entities that were held since December 19, 2016.

The LOC has also held strategy meetings to discuss the implementation of this Law. One aspect of the implementation strategy the LOC has focused on has been the transfer of cases and how the Nation will transition into exercising jurisdiction over child welfare matters. The LOC has determined that the transition of cases from Brown and Outagamie county jurisdiction to the Nation's jurisdiction will be gradual and done according to the following when the Law becomes effective:

1. All new cases will start in the Oneida Family Court.
2. Any case that has started in Brown and Outagamie Counties within the most recent three (3) months will transfer over.
3. All current cases in Brown and Outagamie Counties will remain there, unless in the circumstances the ICW Department feels the case would be better suited in the Oneida Family Court and the parties agree.
4. Before the Law becomes effective the ICW Department will have a conversation with each affected family, whose cases are in Brown and Outagamie Counties, to discuss the status of their case, if their case would be better suited in the Oneida Family Court, and the family's feelings on transfer to the Oneida Family Court.

Before the Law becomes effective, the LOC, ICW Department, and the Oneida Family Court will hold another work meeting to discuss the transfer of cases in more detail.

While considering the concerns about implementation, the LOC wanted to make clear that it has always been their intent that the Law will not become effective until the proper infrastructure that is necessary for implementation is in place.

The LOC determined no revisions are necessary based on this comment.

#### **Comments 25 through 27 – General Comments on Communication between the County and the Nation:**

**Julie Denny (oral):** And the communication that's happening between the county right now and the Tribe I think is just a big, I don't want to use the word, a big joke. A lot of miscommunication. You know, the county all through, I tried to be involved as much as I could with my kid's court hearings and stuff, and everything I hear is well it's the county's jurisdiction. Okay then what are we, puppets on this side that we just follow what the county says because that's kinda how we felt. We felt, personally I felt, we couldn't trust anybody. I didn't trust anybody on the Oneida tribal side that was helping our kids to a degree that made them feel you know, this is gonna go okay, you know.

**Nasbah Hill (written):** I can attest that there are county workers who diligently follow the Indian Child Welfare Act, and are sensitive to ICW cases. They are excellent in keeping in touch with our department and include us in each step of the way with cases pertaining to Oneida children. And sometimes we experience the complete opposite, in which our input and



recommendations may not be taken into consideration at all. A lot of families have sought out our department and asked why their cases can't be heard in the Oneida court or ask if they can transfer current cases into the Oneida court. To which I respond that we have a family court, however dependency matters are not heard as we do not have a children's code adopted yet. A lot of people do not understand that family matters differ from child protection matters and the court proceedings are different as well. I have seen the distrust and frustrations that Oneida families have when dealing with CPS. Child Welfare systems are complex and can prove to be exhausting once you become intertwined with child protection services. Currently, child protection matters are heard in the court of the county in which the child resides in. Families will deal with both CPS workers and ICW workers. This can be overwhelming for families during court hearings or home visits. It is a very invasive process and one that feels like you may not have any control over. There are many times that people will call the ICW department and ask for their case to be transferred to tribal court. I feel that the Oneida Child Welfare law is essential and necessary.

**Jeanette Ninham (written):** There have many times that a worker will not even talk with a family member, they are told go to the county. Why have they not open their doors and said come in let me see if I can help you? I knew the lady at the front desk and she said she can never find anybody there to talk to people that come in. It should not matter if the county has jurisdiction there door should have been open to make a phone call or give them some information. I have heard many times, I didn't know where to turn to or who to talk to from concern family members. Will these workers listen or even have the time to listen?

### ***Response***

The commenters describe various examples of communication between the counties and the Nation, and confusion that parents and families might experience with not knowing which worker – the county Child Protective Services worker or the ICW Department worker – to communicate with. The intention of the Law is to allow the Nation to exercise jurisdiction over child welfare matters and alleviate these communication problems.

Currently, the counties and their Child Protective Services Departments have jurisdiction over child welfare cases involving Oneida children. The county workers serve as the primary workers, with the Indian Child Welfare workers serving a supplementary role in which they collaborate and provide recommendations to the county workers. This Law will alleviate some confusion by allowing the Nation to exercise its jurisdiction over child welfare matters. This exercise of jurisdiction will allow the ICW Department workers to take a primary role, and have more discretion and decision making power throughout the entire process. This will alleviate confusion from the families because they will only have one child welfare department and system to work with. This will hopefully make for more clear and open lines of communication between parents and the ICW Department. Communication between the ICW Department and the families is mandated by Law. The Oneida Family Court will be the body hearing these cases, and they will ensure that the ICW Department is properly communicating with the families throughout the process.

It is important to note that within the implementation of the Law the ICW Department intends to obtain an additional intake worker who would serve as an in-house worker, and be available to assist families who come into the Department requesting assistance, when all other workers are out on investigations or in court proceedings.

If improper miscommunication occurs once the Law is adopted, then families can bring any complaints to the Family Support Services Director or the ICW Department Supervisor, the Social Services Area Manager, or the Government Services Division Director. The LOC can consider directing the ICW Department to develop standard operating procedures to handle complaints regarding a lack of communication.

In regard to the comment by Julie Denny, she additionally stated, *“I come before you today as a grandmother, whose, I’ll try to keep my emotions in check, a grandmother who lost five of her grandkids into this child protection system,” “when those five kids were removed and we stood at out driveways crying and saying goodbye to them and didn’t know where they were going,” and “it took like six months before we even thought about speaking reunification of the children back with the parents and come up with a plan.”* These comments lead to the assumption that as a grandmother who did not have placement of the grandchildren she not a party to the case she was speaking of during her oral testimony. It is important to note that due to the nature of child welfare matters, information regarding details of a case cannot be released to anyone that is not a party in the case. This would explain the inability of the ICW Department and the County Child Protective Services department to share information with the commenter. The comments regarding OCPB being the only entity that shared information with her is a cause for concern and question, due to the fact that the OCPB is also supposed to adhere to strict confidentiality standards. More details would be necessary in order to draw a conclusion on the matter.

There is no recommended revision based on this comment. The LOC can determine if there are any issues surrounding communication that should be further addressed by the Law.

### ***LOC Consideration***

The LOC determined that the Law adequately addresses communication. The LOC discussed the fact that the Law requires mandatory communication between the ICW Department and the parties. Although some members of the OCPB expressed concern that the ICW Department workers are not always immediately available to communicate with concerned families, the LOC discussed the fact that the OCPB is not always immediately available either. The addition of an in-house intake worker that the ICW Department intends to include in the implementation of this Law will address communication concerns because then there will always be a worker available at the Social Services building to address concerns by families and provide customer services. Additionally, with the implementation of this Law the ICW Department will always have a worker on-call after hours and on weekends if emergency situations arise.

The LOC determined no revisions are necessary based on this comment.

### **Comment 28 – General Comment Regarding ICWA:**

**Wes Martin (oral):** And when you apply these stuff in tribal court you have to refer to the Indian Child Welfare. So there is a deferring to when we have dealing with the state courts, you defer to the Indian Child Welfare. It doesn't pertain to the tribe's court. We have our own set of rules and that's what we are supposed to be developing.

### ***Response***

The commenter references deferring to the Indian Child Welfare Act (ICWA), which is a federal law passed in 1978 protect the best interests of Indian children and to promote the stability and security of Indian tribes and families. ICWA sets federal requirements that apply to state custody proceedings involving an Indian child. ICWA does not apply to cases under tribal jurisdiction. This Law develops standards and proceedings for those cases that would fall within the jurisdiction of the Nation.

There is no recommended revision based on this comment.

### ***LOC Consideration***

The LOC understands the role of ICWA and its application to tribal jurisdiction. The LOC has had discussions with the OCPB in which they explained how ICWA will be applied. Currently, in ICWA cases, the ICW Department and the Nation's attorney provide recommendations to the county Child Protective Services department and Court. While the county department and Court must consider the Nation's recommendations, neither are necessarily bound by them. When the Nation adopts its own law for child welfare legal matters, the ICW Department will have complete control over managing cases involving Oneida children and the Oneida Family Court will be required to follow the provisions of the Children's Code when making decisions that reflect Oneida values and customs.

The LOC agrees there are no revisions that should be made based on this comment.

### **Comments 29 through 30 – Financial Analysis:**

**Wes Martin (oral):** But I, and the other one is I have not seen a fiscal analysis. So whether or not, what is the cost of implementing.

**Jeanette Ninham (written):** To this day there is still no Financial Analysis to even know how much this is going to cost.

### ***Response***

Currently, the Oneida Finance Department is developing a thorough fiscal impact statement containing an estimate of the total fiscal year financial effects associated with legislation which includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation.

The Legislative Procedures Act states that legislation may be introduced to the LOC without a fiscal impact statement, however a fiscal impact statement shall be completed and submitted to the LOC prior to legislation being forwarded to the Oneida Business Committee for the consideration of adoption. [see *Legislative Procedures Act section 109.6-3*]. The fiscal impact statement of the Law will be completed before the LOC forwards the Law to the Oneida Business Committee.

Additionally, on April 17, 2017, the LOC and other key players attended a Child Welfare law strategy meeting in which they were briefed on all concerns regarding the development and implementation of the Law, including potential financial impacts. During that work meeting the LOC looked seven generations ahead and made the determination that the protection of Oneida children and families and the promotion of the stability and security of Oneida families is more important than the costs associated with that protection.

### ***LOC Consideration***

The LOC discussed the fact that other than the Menominee Indian Tribe of Wisconsin, the Nation is the only tribe in Wisconsin that does not have a Children's Code. The LOC strongly feels looking seven generations ahead the protection of Oneida children and families and the promotion of the stability and security of Oneida families is more important than the costs associated with that protection. The LOC feels that after thirty-five (35) years of talking about developing a Children's Code, the Nation's is at a place where it is ready to exercise jurisdiction over some child welfare matters.

The financial analysis will be available for the public before the Law is forwarded to the Oneida Business Committee for the consideration of adoption of the Law.

### **Comments 31 through 32 – 161 Agreements:**

**Wes Martin (oral):** Lola Porter, who is probably well known in Indian Country, as one of the authors and knew about tribal codes. She was with us, we had her there, she did, she has done the, how to do the 161s. We could have had that 161 agreement, I know you guys are starting to think about ohh we have to have this 161 agreement. That should have been done two years ago. Ron Hermes, who is the director of that department was willing to come up and negotiate two years ago. Yet, people who were aware of it, but nothing was done. You know, I'm just kinda frustrated that things that should have been done before this one, the foster home licensing and the 161s. And everyone thinks were going to get a lot of money out of this 161 agreement, but they are all for treatment programs, they are not for personnel. And I used to work on 161 agreements. So what I am trying to point out is that, we haven't.

**Wes Martin (written):** 161 Agreement with Brown and Outagamie Counties need to be in place before Implementation of the Children Code and again, this was given by Oneida Child Protection Board to person(s) working on the Code over two (2) years ago and State of Wisconsin personnel were willing to come and help with negotiation with Brown/Outagamie County on the 161 Agreement.

## ***Response***

161 Agreements clarify the relationship between a tribe and a county in providing for the health, safety and welfare of Indian children. The purpose of 161 Agreements is to allow for a county department and a tribe to enter into a written agreement regarding the circumstances in which the county department will make payments for costs of out-of-home placements of Indian children when the placement is ordered by a tribal court. 161 Agreements do not cover any personnel costs the Nation would incur.

There will be a period of time between the adoption of this law and when the law is implemented and effective during which 161 Agreements can be negotiated. The LOC and various key players involved in the development and implementation of the Law have already began creating a strategy for entering into 161 Agreements with the appropriate counties. A subcommittee has been formed and is working diligently to prepare for potential negotiations. In addition to 161 Agreements the Nation is looking to enter into memorandums of understanding and/or agreement with the appropriate counties to detail all responsibilities, procedures and interactions not address in the 161 Agreements.

There is no recommended revision based on this comment, but the LOC can consider if the LOC wants to delay adoption of this Law until the potential 161 Agreements are in place. The LOC should be aware that the appropriate counties may not be willing to enter into negotiations for 161 Agreements without a law to reference.

## ***LOC Consideration***

The LOC agrees to move forward with the adoption of the Law while the 161 Agreements are being developed. The LOC directs the LRO to schedule work meetings with the designated subcommittee regarding the advancement of the 161 Agreements. The Nation intends to enter into 161 Agreements with the appropriate counties. The Wisconsin Department of Children and Families has expressed their willingness to work with the Nation and the appropriate counties to facilitate negotiations surrounding 161 Agreements.

## **Comments 33 through 37 – General Comments on Foster Homes and Foster Home Licensing:**

**Wes Martin (oral):** What I see in here is we brought forth several things, and we believe that if this is implemented right now without this other procedural stuff in there, such as example the foster home licensing. We proposed that well before this, that should have been started and processed. There is no foster home licensing. We start with this, and all of a sudden were going to do that during the implementation. That is not something that can be developed over night.

But I truly believe that if this was implemented and gone forward without them foster home ordinance and anything else that needs to be done, is that we brought in people to help us when we do it.

**Wes Martin (written):** Need for Foster Home Ordinance in Place before Implementing Children Code-this was given to previous person(s) working on this Children Code over two (2) years ago by Oneida Child Protection Board.

**Jeanette Ninham (written):** The Licensing part was removed; you are putting the cart before the horse. To date we only have 8 foster homes and three pending. You must first have the homes and the money before you start removing children from their parents. The tribe only licenses level 2 homes, what about all the other levels of care? The counties have a scale that is used to set the pay for each child placed in the foster care/shelter care/residential placement, will we also? How will the foster care program pay the families? We have had children in group facilities for thousands of dollars per week? Are we hoping that the state and county give us money, more than what we are getting now and apply for more grants to run our Indian child Welfare department?

Right now that same child would be able to get a medical card, foster payment for her care and clothing allowance should she need clothes from the county departments are we able to handle all of this? The Child Protective Board was paying for one child out of our budget (with the approval of the treasure office) and the foster parent was receiving 1,114.00 per month (one child).

**Jeanette Ninham (written):** Why are we passing a law, when we have no foster home to take care of these children? Are we going to turn around and pay the county to keep our children in non-tribal homes? The foster care department needs to identify policy and practice barriers to foster parent recruitment and retention, including licensing requirements and inter-agency relationships.

### ***Response***

At this time the Child Welfare law does not include provisions on foster home licensing standards or procedure. Currently, the Nation has the ability to license up to level two (2) foster homes. The Nation is the only tribe that has the ability to license foster homes both on and off the reservation. The Nation has the ability to license foster homes both on and off the reservation because the Nation licenses homes under Wisconsin standards. If the Nation were to change the standards by which they license foster homes so that the standards deviate from the Wisconsin standards then the Nation would lose the ability to license foster homes off the reservation. The Nation currently utilizes county resources, and county foster homes and treatment facilities are used since the Nation does not have the ability to license those particular homes.

The commenter is correct in stating that the Nation is in need of more foster homes, but the need for more foster homes is an issue that is plaguing communities everywhere across the United States. The development and implementation of a foster home licensing law will not guarantee the availability of more foster homes. The ICW Department has expressed the fact that it is not that they are turning away homes that do not meet the Wisconsin standards for licensing, it is that we do not have enough homes volunteering to serve as foster homes in the first place.



The ICW Department has the intent to include another Foster Care Coordinator in the implementation of this Law for the purpose of increased recruitment of more foster homes.

The Nation intends to utilize Oneida foster homes when available, but due to the lack of available homes, and the fact that the Nation can only license up to level two (2) homes, the needs of the Nation cannot be met solely by Oneida foster homes. The Nation has the intent to enter into 161 Agreements and memorandums of agreement and/or understanding with the appropriate counties for the use of foster homes, shelter care facilities, and treatment facilities that the Nation does not currently have and cannot currently license.

Although the utilization of non-Oneida foster homes is necessary the Law contains an order of placement preferences that prioritizes the child being placed with family or members of the Nation before being placed in a foster home. [*see Child Welfare law section 708.10*]. Additionally, the potential Cultural Wellness Facilitator and Healer will also be available to provide training on traditions and culture to those non-Oneida foster homes off the reservation.

Since the Nation licenses foster homes under the Wisconsin standards, the Nation will follow the current payment scale the counties use for the payment of foster homes the Nation provides. The Nation will be entering discussions and negotiations with the appropriate counties regarding 161 Agreements and what costs associated with child welfare issues the Nation will be responsible for and what costs the counties will be responsible for. The costs discussed in the 161 Agreements will cover foster homes, shelter care, and treatment facilities. Negotiations for 161 Agreements have not yet occurred so it has not been determined who which entity – the county or the Nation – will be responsible for each specific cost. Research has shown that often the tribe will be responsible for providing payment to families for kinship care, and the county will provide payment for foster homes. This is not a guarantee of what could result from a 161 Agreement, but it does illustrates current trends and provide some insight on possible outcomes.

Additionally, there is a High Cost Fund Pool available to assist in the payment of the most expensive treatment facilities that the Nation will have the opportunity to utilize.

The ICW Department will also be available to refer families to services so that they can receive assistance for their needs.

Although the question regarding whether a law governing foster home licensing should be developed has already been brought to the LOC's attention and the LOC made the decision to continue using Wisconsin standards at this time, the LOC could consider whether a law governing foster care licensing standards should be developed prior to the implementation of this Law.

### ***LOC Consideration***

The LOC had discussion on foster home licensing, and whether in the future we would be able to develop different sets of foster home licensing standards for those foster homes on and off the reservation. The LOC determined that the current licensing practices for foster homes is sufficient, and at this time the LOC will not pursue a foster home licensing law. The LOC

determined that a foster home licensing law is not necessary to implement the Law, and that the LOC can revisit the idea of a foster home licensing law in the future.

**Jeanette Ninham (written):** How are we making sure they are not lost in the system or adopted out to non-tribal families? We continue to see over and over again that non-tribal foster families want to keep our Indian babies.

### ***Response***

The commenter expresses concern that non-tribal foster homes will keep Oneida children, and wants to ensure that this does not occur. The Law addresses this issue by codifying the order of placement preferences in sections 708.10-1 and 708.10-2, stated as follows:

#### **708.10. Order of Placement Preferences**

**708.10-1. The following order of placement preferences shall be followed when it is necessary to place a child outside of the home under this law:**

- (a) A member of the child's immediate or extended family;
- (b) A family clan member;
- (c) A member of the Nation;
- (d) Descendants of the Nation;
- (e) A member of another federally recognized tribe;
- (f) Fictive kin within the Nation community;
- (g) Fictive kin outside the Nation community; or
- (h) Any other person or persons not listed above.

**708.10-2. The order of placement preferences listed in section 708.10-1. are prioritized from the most preference given to a child placed in a home in accordance with section 708.10-1(a) and the least amount of preference given to a child placed in a home in accordance with section 708.10-1(h).**

The Law also requires a six (6) month review of the permanency plan which will include a review of where the child is currently placed, the goals of the permanency plan, the continuing necessity for and the safety and appropriateness of the placement, and the progress toward eliminating the causes for the child's placement outside the home and returning the child safely to the home or obtaining a permanent placement for the child. The following portion of the Law states this requirement:

**708.21-3. The Court shall hold a hearing to review the permanency plan no later than six (6) months after the date on which the child was first removed from the home and every six months thereafter for as long as the child is placed outside the home and if found to be in need of protection or services.**

**708.21-4. After the hearing, the Court shall enter a written order addressing the following:**

- (a) The continuing necessity for and the safety and appropriateness of the placement;
- (b) The compliance with the permanency plan by the Department and any other service providers, the child's parent(s), and the child;



- (c) Efforts taken to involve appropriate service providers and Department staff in meeting the special needs of the child and the child's parent(s);
- (d) The progress toward eliminating the causes for the child's placement outside the home and returning the child safely to the home or obtaining a permanent placement for the child;
- (e) The date by which it is likely that the child will be returned to the home or placed for adoption, with a guardian, with a fit and willing relative, or in some other permanent living arrangement;
- (f) Whether reasonable efforts were made by the Department to achieve the permanency plan goal(s);
- (g) Whether reasonable efforts were made by the Department to place the child in a placement that enables the sibling group to remain together or have frequent visitation or other ongoing interaction; and
- (h) The date of the next review hearing, if appropriate.

There is no recommended revision based on this comment. The LOC can consider whether or not the Law appropriately ensures that Oneida children and families will remain preserved.

### ***LOC Consideration***

The LOC determined that the Law requires the placement preferences to be followed, and a six (6) month review to occur to ensure that the placement remains appropriate, and these provisions address the concern that Oneida children and families will not remain preserved.

The LOC also discussed the fact that a resolution will be developed to incorporate the requirement of the ICW Department and Nation's Child Welfare attorney to follow and advocate for the placement preferences for those cases that do not fall under the Nation's jurisdiction and instead are still governed by ICWA.

### **Comment 38 – Order of Placement Preferences:**

**708.10-3. In order to deviate from the placement preferences listed in section 708.10-1, the Court shall consider the best interest of the child when determining whether there is good cause to go outside the placement preference.**

- (a) Good cause to go outside the placement preferences shall be determined based on any of the following:
  - (1) When appropriate, the request from the child's parent or the child, when the child is age twelve (12) or older;
  - (2) Any extraordinary physical, mental or emotional health needs of the child requiring highly specialized treatment services as established by an expert; or
  - (3) The unavailability of a suitable placement after diligent efforts have been made to place the child in the placement preference listed in section 708.10-1.
- (b) The party requesting to deviate from the placement preferences listed in 708.10-1 has the burden of establishing good cause.

**Michelle L. Gordon (written):** 708.10-3 discusses deviation from placement preferences for good cause. A list is given and that list appears to be exhaustive. In other words, the Court may only consider 1, 2, and 3. I believe that limits the court and there may be other reasons to deviate. I think the court should be allowed to state other reasons to deviate within their discretion. This can always be appealed, but there may be circumstances other than what fits in the 3 options given that would allow for good cause to deviate.

### ***Response***

The following revision is recommended:

708.10-3. In order to deviate from the placement preferences listed in section 708.10-1, the Court shall consider the best interest of the child when determining whether there is good cause to go outside the placement preference.

(a) Good cause to go outside the placement preferences shall be determined based on any of the following:

(1) When appropriate, the request from the child's parent or the child, when the child is age twelve (12) or older;

(2) Any extraordinary physical, mental or emotional health needs of the child requiring highly specialized treatment services as established by an expert; ~~or~~

(3) The unavailability of a suitable placement after diligent efforts have been made to place the child in the placement preference listed in section 708.10-1; ~~or-~~

(4) Any other reason deemed by the Court to be in the best interest of the child.

(b) The party requesting to deviate from the placement preferences listed in 708.10-1 has the burden of establishing good cause.

The LOC can consider whether or not to include the recommended revision.

### ***LOC Consideration***

The LOC wishes to include the recommended revision.

### **Comment 39 through 40 – Consent Decree :**

**Wes Martin (oral):** When we met with the LOC we made recommendations as an example was like a pre-trial meeting, and people if they can come together, the parents and whoever else, ICW, can do a consent decree, and work on a consent decree. A consent decree is the form of a contract, or whatever, that certain things will be done by the parents, certain things will be provided to them, whatever, and if they agree to do it the incident or whatever goes away as if it never happened.

**Wes Martin (written):** Consent Decree Agreements.

### ***Response***

After meeting with the OCPB, the ICW Department, and reviewing the comment above, the LOC may want to consider the inclusion of language regarding consent decrees in the Law.

The addition of the following language is recommended:

### **708.17-1. Consent Decree**

708.17-1. *Consent Decree.* At any time after the filing of a petition pursuant to section 708.16 and before the entry of judgment, the Court may suspend the proceedings and place the child under supervision in the home or present placement of the child. The Court may establish terms and conditions applicable to the child and the child's parent, guardian or legal custodian. The order under this section shall be known as a consent decree and must be agreed to by the child who is twelve (12) years of age or older, the parent, guardian or legal custodian, and the person filing the petition. The consent decree shall be reduced to writing and given to the parties.

708.17-2. *Requirements of a Consent Decree.* If at the time the consent decree is entered into the child is placed outside the home and if the consent decree maintains the child in that placement, the consent decree shall include all of the following:

- (a) A finding that placement of the child in his or her home would be contrary to the welfare of the child;
- (b) A finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety and best interests are the paramount concerns;
- (c) If a permanency plan has previously been prepared for the child, a finding as to whether the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan; and
- (d) If the child has one or more siblings who have also been removed from the home, the consent decree shall include a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that the placement of the siblings together would be contrary to the safety, well-being and best interests of the child or any of those siblings, in which case the Court shall order the department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety, well-being or best interests of the child or any of those siblings.

708.17-3. *Time Limits of Consent Decree.* A consent decree shall remain in effect up to six (6) months unless the child, parent, guardian, or legal custodian is discharged sooner by the Court. The time limits under this law shall be tolled during the pendency of the consent decree.

708.17-4. *Extension of a Consent Decree.* Upon the motion of the Court or the request of the child, parent, guardian, legal custodian, child's guardian ad litem, or the Department, the Court may, after giving notice to the parties to the consent decree extend the decree for up to an additional six (6) months in the absence of objection to extension by the parties to the initial consent decree. If the child, parent, guardian, legal custodian, child's guardian ad litem objects to the extension, the Court shall schedule a hearing and make a determination on the issue of extension.

708.17-5. If, prior to discharge by the Court, or the expiration of the consent decree, the Court finds after conducting a hearing that the child, parent, guardian, or legal custodian has failed to fulfill the express terms and conditions of the consent decree, the hearing under which the child

was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

### ***LOC Consideration***

The LOC appreciates Wes Martin's recommendation that language regarding consent decrees be added to the Law and believes this addition will be beneficial to the Nation. The LOC wishes to add the recommended language.

### **Comment 41 – Customary Adoption:**

**Wes Martin (written):** Customary Adoptions in the Oneida Children Code.

### ***Response***

Based on the recommendation from the former Deputy Director of National Indian Child Welfare Association (NICWA), the LRO contacted Anita Fineday, the managing director of the Indian Child Welfare Program for the Casey Family Programs and recent appointee to the federal commission: Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act. Anita Fineday provided various tribal language samples regarding customary adoption. With her guidance, and review of other tribal codes and laws regarding customary adoption we created the customary adoption section found in the Law. [see *Child Welfare law section 708.39-2*].

There is no recommended revision based on this comment. The LOC may review the section of the Law regarding customary adoptions and determine if any changes or revisions are necessary.

### ***LOC Consideration***

The LOC is satisfied with the customary adoption language included in section 708.39-2 of the Law. The LOC agrees that no revisions are necessary based on this comment.

### **Comment 42 – General Comment Regarding Roles, Procedures and Responsibilities Described in Law:**

**Julie Denny (written):** We have young parents that are in the system, you know its not somebody of my age that getting my kids taken away. Its young adult parents, and they don't know anything about what they've gotten themselves into or how to get out you know, other than you told them to do all this and all that and you do it and ohh you don't get your kids back. And I keep reminding my kids, even though I don't feel removal was justifiable, but that's not for me to determine, but remember that day August 22 when those five kids were removed and we stood at out driveways crying and saying goodbye to them and didn't know where they were going. So our process that we have in place really needs to be, really needs to be identified – roles, responsibilities, communications, all that has to happen. I mean these families' sprits are broken, and how do we bring them back as a family and make them feel you weren't the worst parents, that shouldn't have never truly happened. I'm sure there are cases where emergency removal is

justifiable but you know, we really need to be strong and if we're going to move forward with this and we got our ducks in order on this side.

### ***Response***

The Law provides a thorough and detailed explanation of all the roles, procedures, and responsibilities so that parents, whether they be young or old, are aware of all the expectations that will be placed upon them. Additionally, the goal of the ICW Department is to provide families assistance in meeting any conditions that are placed on them so that reunification with their child can occur sooner. The Law mandates this assistance be provided.

The commenter also discusses the fact that often in child welfare cases the family's spirits are broken. The Governmental Services Division intends to obtain a Cultural Wellness Facilitator and Healer to assist in solving this issue. The Cultural Wellness Facilitator will be able to provide families with culturally based healing methods to assist the families with healing and growth.

There are no recommended revisions based on this comment. It is a policy determination for the LOC to decide if language referencing the Cultural Wellness Facilitator and Healer should be included in the Law.

### ***LOC Consideration***

The LOC has already determined that language referencing the Cultural Wellness Facilitator and Healer should be included in the Law.

The LOC discussed the fact that the Law already mandates the ICW Department to provide services and assistance to families so that the families can meet their conditions and goals. The Oneida Family Court also monitors the ICW Department to ensure that before a decision in court is made the ICW Department has provided the necessary services and assistance to families.

### **Comment 43 – Scope:**

**708.4-3. The Nation shall intervene in all ICWA/WICWA cases involving a child that is enrolled or eligible for enrollment unless such intervention would be impracticable under the circumstances of the case as determined by the Department.**

**Michelle L. Gordon (written):** 708.4-3 at line 202 states that the Nation shall intervene in all ICWA cases. This should be clarified by stating except those that the Nation chooses to take jurisdiction over. Cases may start in State court and therefore make it an ICWA case, but in some cases we will move to transfer and take jurisdiction, but in others we may just intervene. Just a suggestion to clarify.

### ***Response***

It is recommended that section 708.4-3 be removed from the Law because this information will be incorporated into a resolution that address the standards and procedures for address an child welfare case that does not fall under the jurisdiction of the Nation and will instead be governed by ICWA.

The LOC can consider whether this section should remain in the Law or if the section should be removed to a resolution that address how ICWA cases will be handled by the Nation.

### ***LOC Consideration***

The LOC agrees that section 708.4-3 should be removed from the Law and reincorporated into a resolution that address child welfare cases that do not fall under the jurisdiction of the Law and instead are governed by ICWA.

### **Comment 44 – Parental Objection to Transfer of Case to Oneida Judiciary:**

**Wes Martin (written):** Right for Parents to objection to transfer of case to Oneida Judiciary.

### ***Response***

The parental objection to the transfer of a case to a tribal judiciary is allowed under the Indian Child Welfare Act (ICWA). ICWA provides:

#### **25 U.S.C. § 1911. Indian tribe jurisdiction over Indian child custody proceedings**

##### **(a) Exclusive jurisdiction**

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

##### **(b) Transfer of proceedings; declination by tribal court**

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

Additionally, it is the intent of the ICW Department to meet with each effected family prior to the implementation of this Law to discuss the status of their case, whether or not transfer will be sought when the Law becomes effective, and whether the parents object to that transfer.

There is no recommended revision based on this comment.

### ***LOC Consideration***

The LOC agrees that there is no revision necessary based on this comment. The objection to a transfer to a tribal court by a parent is already allowed by ICWA.

#### Comments 45 through 46– General Comment Regarding Jurisdiction:

**Julie Denny (written):** You know, jurisdiction, what does that all mean. Is the county, how much is the county involved and will they release their, their jurisdiction back to the Tribe?

**Nasbah Hill (written):** By putting this law into place would allow for the tribe to take jurisdiction over Oneida children and have child protection cases heard into our own tribal court. Our department has the educational background and expertise to handle these matters. This legislation would protect Oneida children by allowing the tribe to take full jurisdiction over child protection cases and hear them into tribal court.

#### *Response*

The Nation will be expressing its sovereignty and exercising jurisdiction over child welfare matters. The Indian Child Welfare Act (ICWA) allows tribes to take jurisdiction over these matters, as illustrated by the following provision:

#### **§ 1911. Indian tribe jurisdiction over Indian child custody proceedings**

##### **(a) Exclusive jurisdiction**

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

##### **(b) Transfer of proceedings; declination by tribal court**

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

##### **(c) State court proceedings; intervention**

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

##### **(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes**

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.



The Law addresses jurisdiction in section 708.5. The Law will have the authority to take jurisdiction over all children enrolled or eligible for enrollment in Brown and Outagamie County that are in need of protection or services. Additionally, the Law allows for the Nation to take jurisdiction over non-Oneida children in need of protection and services if ALL of the following conditions are met:

1. The non-Oneida child is a sibling of a child enrolled or eligible for enrollment in the Nation; and
2. The non-Oneida child is present and resides within the boundaries of the Reservation; and
3. The Court receives consent from the non-Oneida child's parent(s).

This provision allowing the Nation to take jurisdiction over a child that is not enrolled or eligible for enrollment was added to the law to allow sibling groups to remain together.

The Law also allows for the Nation to transfer a case it has jurisdiction over to a court of competent jurisdiction where the other court has a significant interest in the child and the transfer is in the best interest of the child, allowing flexibility for the Nation's Judiciary. The Law also allows a case to transfer from a court of competent jurisdiction to the Oneida Family Court so long as personal and subject matter jurisdiction are established.

There is no recommended revision based on this comment.

### ***LOC Consideration***

The LOC agrees that the jurisdiction of this Law is clear and proper. The LOC directed the LRO to clarify the response by adding an "and" after the first bullet point so that it is clear that ALL conditions must be met in order for the Nation to take jurisdiction over a child that is not enrolled or eligible for enrollment. The LOC determined that the explanation given in the response is a sufficient response to the comments made.

### **Comment 47 – Jurisdiction – Sibling Exception:**

**Jeanette Ninham (written):** Will the tribe be responsible for all the children in the home, we have many blended families and can the tribe carry the cost to place all the children in our foster homes?

### ***Response***

The Law allows for the Nation to take jurisdiction over non-Oneida children in need of protection and services if ALL of the following conditions are met:

1. The non-Oneida child is a sibling of a child enrolled or eligible for enrollment in the Nation; and
2. The non-Oneida child is present and resides within the boundaries of the Reservation; and
3. The Court receives consent from the non-Oneida child's parent(s).



This provision allowing the Nation to take jurisdiction over a child that is not enrolled or eligible for enrollment was added to the law to allow sibling groups to remain together. The LOC made the determination that it is a priority to keep sibling groups together throughout child welfare proceedings.

Additionally, the Law allows the Nation to transfer a case to another court of competent jurisdiction where the other court has a significant interest in the child and the transfer would be in the best interest of the child. This could be utilized if the sibling group's needs could be better served in a different court.

### ***LOC Consideration***

The LOC discussed the intent behind allowing a sibling exception in the jurisdiction of the Law. The intent of a sibling exception was to prevent the additional burden on a family by having child welfare cases heard in two different court systems. This sibling exception helps keep a blended family's legal matters together in the same court.

The LOC determined that there is no revision necessary based on this comment.

### **Comment 48 – General Comment Regarding Responsibilities of ICW Department:**

**Melinda K. Danforth (written):** First of all, I want to express that my comments regarding this Law are from my perspective as an Oneida member that has gone through the Brown County Ongoing Child Protection Services (CPS) and the Oneida Nations Indian Child Welfare (ICW). Secondly, I highly agree that we are in need of a Law where the Oneida Judicial system will have the legal jurisdiction over the child who is alleged to be in need of protection or services, and jurisdiction over other matters relating to the child. Although I do not feel the Law is ready to be adopted. It is being rushed without looking at all avenues in the best welfare and protection of the Oneida children (see reasons noted below).

Within the past two (2) years of having temporary placement of my grandchildren to now being their legal guardian I need to share the following concerns of what I experienced, especially since ALL duties and responsibilities will then be on the ICW workers taking over all Brown County and Outagamie County cases:

1. As indicated the plan is to hire 4 to 5 more staff in this area. This is seriously an underestimated amount of staff needed to take care of ALL cases. The current ICW staff are not involved in all the activities that the Brown County CPS staff are:
  - a. Monthly house visits-ICW came to first initial visit when I had to pick up my grandsons from their mothers house. ICW then came to my house the 2nd time over a year later. CPS came every month.
  - b. Monthly Parent house visits-ICW went to maybe 2 of my grandson's mother house visits. CPS supervised or sent an Intern to attend/supervise the visits.
  - c. Parent (Father) Involvement-ICW met my son once during a family meeting. CPS extended/reached out a few times and asked that I share what he needs to do.

d. Weekly Parent (Mother) visits-ICW wasn't in attendance when I dropped my grandchildren off. CPS had to be at each supervised visit. e. Health-ICW never asked if the boys are caught up on their shots, dental or doctor appoints. CPS contacted me almost monthly if they had their annual physicals, caught up with shots, going to dental, etc.

### ***Response***

The commenter expresses her experience with both the Brown County Child Protection Services (CPS) and the Oneida Nation Indian Child Welfare Department. The commenter expresses concern that the ICW Department will not have enough staff to properly handle all cases. The commenter then goes on to describe ICW and CPS's involvement in her specific case. It is important to note that currently the county CPS workers are the primary workers assigned to the case, and the ICW Department workers serve a supplementary role. This means that the ICW workers are not the workers that are required to complete home visits. This explains why the ICW Department workers were not present at every home visit like the CPS workers were in the commenter's case. With the adoption of this Law the ICW Department workers will be taking over this responsibility.

Currently, Brown County has intake workers that average twelve (12) to fifteen (15) cases each, and on-going workers that average eighteen (18) to twenty-two (22) cases each, which the ICW Department has twelve (12) families per on-going worker, and one (1) intake worker who has twenty-two (22) open investigations. With the additional staff included in the implementation of this Law, it is estimated that each on-going worker would have about eight (8) cases and the intake workers would have about seven (7) cases each. This is a significantly lighter case load than the county workers. A lighter case load will allow the ICW Department more time to dedicate to thorough investigations, and more time to commit to providing services and attention to families to facilitate the families in meeting their conditions and reunifying with their children. This will also allow the ICW Department to have more focus on providing the community preventative services.

In addition to a lighter workload, the ICW Department intends to obtain a paralegal during the implementation of this Law. The addition of a paralegal to the ICW Department will allow the paralegal to focus on all legal documentation and reporting instead of the ICW Department workers so that the ICW Department workers can focus more on providing services to families.

There is no recommended revision based on this comment. The LOC can consider whether the ICW Department's plan to increase its staff is appropriate or whether more staff should be included.

### ***LOC Consideration***

The LOC understands that the role of the ICW Department will be shifting and with the implementation of this Law they ICW Department will have more responsibilities and duties as the primary worker for the child welfare cases that fall under the jurisdiction of the Nation. The ICW Department was consulted for the development of an implementation plan, and it was the

ICW Department that determined how many additional workers would be necessary to properly implement this Law. The LOC approves the ICW Department's recommendation for additional staff that is needed.

The additional ICW Department staff will help alleviate the case load of each worker allowing the workers to have more time to focus on providing services to families. If the ICW Department later determines that more staff is necessary then the ICW Department can follow the normal budgetary process to obtain more staff.

The LOC determined there was no revision necessary based on this comment.

#### **Comment 49 – General Comment Regarding Parental Visits:**

**Melinda K. Danforth (written):** 2. Supervised visits (house) -it has to be strict where ONLY the parent is allowed at these visits. Other members of the family or friends should not be allowed to be involved in these. Defeats the purpose of the parent to parent.

#### ***Response***

The commenter expresses concern surrounding visitation between parents and children and whether or not extended family should be involved in the visitation.

The purpose of the Law is to provide for the welfare, care, and protection of Oneida children through the preservation of the family unit. The ultimate goal in every child welfare case is the reunification of the child with his or her parents. The preservation of the family unit includes the preservation of the child's relationship with his or her extended family.

The Law only allows for visitation with extended family when it is in the best interest of the child. Details regarding the placement of the child, visitation and communication will be determined in the permanency plan that is created by the ICW Department and approved by the Family Court.

Additionally, the ICW Department is beginning to explore the possibility of providing a service for supervised visitations between a parent and child so that the visitations can occur in a safe and nurturing environment for the families and children. The ICW Department intends to include an additional parenting specialist in the implementation of this Law. The additional parenting specialist could allow this service to be provided to families in a manner that would not only support the families, but also provide the families with parenting services and guidance at the same time.

There is no recommended revision based on this comment.

#### ***LOC Consideration***

The LOC discussed the benefits of providing a supervised visitation service for families to utilize. The LOC directed the LRO to communicate with the ICW Department and the Governmental Services Division Director on the development of supervised visitation services.

#### **Comment 50 – General Comment Regarding Harassment:**

**Melinda K. Danforth (written):** Parental Harassment-many times I've experienced outbursts from my grandson's mother and nothing was ever done. She was allowed to constantly verbally and socially harass me and my family. There needs to be some strict rules on this when there is written proof of such.

#### ***Response***

Any harassment by a party to a case should be immediately reported to the Family Court Judge. The addition of a Cultural Wellness Facilitator and Healer will provide all parties to a case the opportunity to obtain a service that will focus on culturally appropriate healing and wellness. A better focus on the cultural and spiritual healing of all parties involved in child welfare matters may lead to the prevention of harassment.

There is no recommended revision based on this comment. The LOC can consider whether the role of the Cultural Wellness Facilitator and Healer should be included in the Law. The LOC can also consider if harassment should be further addressed in the Law.

#### ***LOC Consideration***

The LOC discussed issues surrounding harassment and the difficulty in attempting to legislate kindness. The LOC made the determination to include the role of the Cultural Wellness Facilitator and Healer in the Law, and believes that the services the Cultural Wellness Facilitator and Healer can lead to less occurrences of harassment. The LOC also discussed the fact that a concerned party can notify the ICW Department of any harassment, who can then notify the Family Court so that it can be determined if the order needs modification or if supervised visitation would be necessary. If the harassment is severe then the concerned party should notify the police.

#### **Comment 51 – General Comment Regarding Training and Education:**

**Melinda K. Danforth (written):** Training/Educating-Not once has either CPS or ICW mentioned to me how to help my grandsons through their emotional trauma. They felt abandoned repeatedly by both parents the past 2 years. It isn't easy as a grandmother to see them hurt and I don't know what to say to them other than show them and tell them how much love they have from me and my family. ICW must educate the person taking in any child because it is a life-changing event for some.

#### ***Response***

The ICW Department will now be the primary case worker assigned to child welfare matters involving Oneida children and families that fall under the jurisdiction of this Law. This means that the ICW worker must ensure that the proper services are provided to each family. Additionally, the Cultural Wellness Facilitator and Healer will be utilized to assist children and their families who are suffering from emotional trauma due to the child welfare matters.

There is no recommended revision based on this comment. The LOC can determine whether or not more consideration is necessary for this comment.

### ***LOC Consideration***

The LOC determined that no more consideration is needed on this subject. The ICW Department will provide services and assist families with addressing these issues. Additionally, the Foster Care Coordinator provides training to families and supervises foster homes to ensure that the proper standards are being met. The Cultural Wellness Facilitator and Healer will also be able to assist families that are suffering from emotional trauma.

The LOC determined that there is no necessary revision based on this comment.

### **Comments 52 through 54 – Indian Child Welfare Department Duties and Responsibilities – Memorandum of Agreement and/or Understanding:**

**708.7-2(e) Enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Committee, Oneida Police Department, Oneida Nation Child Support Agency and any other appropriate department in order to carry out the provisions of this law.**

**Bonnie Pigman (oral):** Good afternoon. I have two items, excuse me, I am speaking on behalf of the Trust Enrollment Department. And on lines 336 or 337 I would like for that to be changed to read as, “enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Department” not Committee, Department.

**Susan White (written):** The Trust Enrollment Department is requesting consideration in allowing the following change to be made: Lines 336/337 change to read as follows: (e) Enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Department, Oneida....”

### ***Response***

The following revision is recommended to allow flexibility on whether the memorandum of agreement and/or understanding will be with the Trust Enrollment Committee or Trust Enrollment Department:

708.7-2(e) Enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Committee and/or Department, Oneida Police Department, Oneida Nation Child

Support Agency and any other appropriate department in order to carry out the provisions of this law;

The LOC can make one (1) of the following determinations:

1. Include the recommended revision;
2. Leave the statement as “Oneida Trust Enrollment Committee;” or
3. Revise the statement to say “Oneida Trust Enrollment Department.”

### ***LOC Consideration***

The LOC discussed the fact that although the ICW Department can enter into a memorandum of agreement and/or understanding with the Trust Enrollment Department, that agreement would still have to be approved by the Trust Enrollment Committee. The LOC decided to include the recommended revision so that there is flexibility on who to enter a memorandum of agreement and/or understanding with.

**Melinda K. Danforth (written):** I recommend including a Memorandum of Agreement or Understanding with the Oneida Nation School System when it comes to truancy or family issues.

### ***Response***

The commenter expresses the desire for the ICW Department to enter into a memorandum of agreement or understanding with the Oneida Nation School System for truancy or family issues but does not state a clear purpose for that memorandum of agreement or understanding.

Truancy, and other issues related to juveniles in need of protection or services (JIPS), are not covered or included in the proposed Law. Previously, the LOC made the determination for the Law to focus on children in need of protection and services (CHIPS) and to not include JIPS at this time with the understanding that in the future a law regarding JIPS may be developed. In order for the Nation to develop and implement a law governing JIPS additional resources and infrastructure would be needed, such as a secure detention facility specifically for juveniles.

The Law does allow for the ICW Department to enter into memorandums of understanding and/or agreement with any appropriate department in order to carry out the provisions of this law, as stated in section 708.7-2(e).

708.7-2(e) Enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Committee, Oneida Police Department, Oneida Nation Child Support Agency and any other appropriate department in order to carry out the provisions of this law.

The LOC can make the following policy determinations:

1. Determine if, and when, any legislation regarding JIPS should be developed or if it should be a provision added to the Law. With no secure detention facility for juveniles, this is not advisable.



2. Determine if the ICW Department and the Oneida Nation School System should be required to enter into a memorandum of understanding and/or agreement.

### ***LOC Consideration***

The LOC determined that they do not wish to include JIPS cases in the Law at this point in time. The LOC directed the LRO to set up a work meeting between the ICW Department and the Oneida Nation School System to discuss communication by the Oneida Nation School System to the ICW Department when the Oneida Nation School System is aware of conditions that lead them to believe there might be child welfare issues occurring, and whether a memorandum of agreement and/or understanding is needed to address this communication.

### **Comment 55 – General Comment Regarding Timelines Contained in Law:**

**708.33-2. A petition for the termination of parental rights may be filed when the child has been placed outside of his or her home for fifteen (15) of the most recent twenty-two (22) months unless any of the following applies:**

- (a) The child is being cared for by a fit and willing relative of the child;
- (b) The child's permanency plan indicates and provides documentation that termination of parental rights to the child is not in the best interests of the child;
- (c) The Department, if required by a dispositional order, failed to make reasonable efforts to make it possible for the child to return safely to his or her home, did not provide or refer services to the family of the child for the safe return of the child to his or her home that were consistent with the time period in the child's permanency plan; or
- (d) Grounds for an involuntary termination of parental rights do not exist.

**Jeanette Ninham (written):** This has been found to be very difficult for our families to get there children back and fulfill all the conditions required of them in the timeline given. The timeline 18/22 should be moved out longer or include extensions.

### ***Response***

I believe the commenter is referencing the Wisconsin requirement that a petition to terminate parental rights must be filed if the child has been placed outside his or her home for fifteen (15) of the last twenty-two (22) months, and expressing the opinion that this is not enough time for a parent to work towards reunification with their child. [see Wis. Stat. 48.417(1)(a)].

The Law contains a similar provision, but is clear that the petition for the termination of parental rights does not have to be followed in the exceptions described in section 708.33-2(a)-(d) are met.

Additionally, it is important to note that the Nation's goal is the preservation of the family unit and reunification of the child with the parents. The ICW workers will provide services to families and assist the families in ensuring any conditions places on them are satisfied in a timely

manner so that reunification with the child can occur. The Law requires the ICW Department and its workers to be responsible for making reasonable efforts to obtain necessary services for the child and family, and for identifying and referring parties to resources in the community calculated to resolve the problems presented in the various child welfare petitions. [see *Child Welfare law section 708.7-1(i), 708.7-2(a)*].

There is no recommended revision based on this comment, but the LOC can consider the adequacy of the timelines contained under the Law and whether the timelines should be revised.

### ***LOC Consideration***

The LOC determined that the Law adequately addresses this concern, and there is no revision to the Law based on this comment. The Law contains timelines so it can be ensured that a child is permanently placed in a home, and not held in limbo in the child welfare system for an extended period of time. The Law allows exceptions to the established timelines, described in section 708.33-2(a)-(d), for when a parent is making efforts to fulfill conditions. The LOC understands that not all parents will be able to finish fulfilling conditions during the established timelines, but if they are making efforts to do so then that can be taken into consideration.

### **Comments 56 through 57– Requests for Medical History:**

#### **708.13. Discovery and Records**

**708.13-1.** Upon written request, the parties and their counsel shall have the right to inspect, copy or photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child including reports of preliminary inquiries, predisposition studies and supervision records relating to the child which are in the possession of the Nation's Child Welfare attorney or the Department that pertain to any case under this law.

**708.13-2.** If a request for discovery is refused, the person may submit an application to the Court requesting an order granting discovery. Motions for discovery shall certify that a request for discovery has been made and refused.

**708.13-3.** If the discovery violates a privileged communication or a work product rule, the Court may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

**708.13-4.** The identity of the individual that initiated the investigation by contacting the Department, shall be redacted in all documents that are made available to the parties.

**708.13-5.** In addition to the discovery procedures permitted under this law, the discovery procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all proceedings under this law.

**Jeanette Ninham (written):** Many of our children are coming from FASD Fetal Alcohol Syndrome Disorder, heroin and Opioid addiction from their mothers. It is very important that under line 1637 all the information be shared of the parent history of mental state, psychiatric, psychological, and therapeutic and what will/can be hereditary so this can be shared with the grandparents/foster/adopt family.



**Melinda K. Danforth (written):** Parent Mental/Health-there needs to be immediate enforcement of allowing the person(s) know of any mental/health history of both parents. If there are taking in any child they should know if there are possible hereditary or life-threatening family history illnesses.

### ***Response***

The Law allows for an individual to inspect, copy or photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child which are in the possession of the Nation's Child Welfare attorney or the Department that pertain to any case under this law. *[see Child Welfare law section 708.13]*. If a party's request for documents is denied then the party is allowed to request the Court to compel the discovery, as long as the discovery does not contain confidential or privileged information.

Additionally, the Department's disposition report contains a social history of the child and family which is the social, economic, cultural and familial aspects of a person and how those aspects affect the person's functioning and situation in life. *[see Child Welfare law section 708.19-1(a)]*. The permanency plan will include all appropriate information deemed necessary by the Court, which could include relevant medical conditions. *[see Child Welfare law section 708.21-1(j)]*. The Department's termination of parental rights report contains the social history of the child and family, including any relevant medical conditions. *[see Child Welfare law section 708.36-1(a)]*.

There is not recommended revision based on this comment. The LOC can consider whether the social history report contained in the disposition report should contain relevant medical conditions as specified in the termination of parental rights report. The LOC can address this issue in two ways.

1. The LOC can determine it is not required to state that relevant medical conditions should be included in the social history report of the disposition report, and if that information is not in the report then the parties are able to use the discovery methods provided in section 708.13 of the Law.
2. The LOC can determine that the social history included in the disposition report should specifically state any relevant medical conditions, as stated in the termination of parental rights report. The following revision could be made to accomplish this:

708.19-1. Before the dispositional hearing, the Department shall submit a written report to the Court, with a copy to the parties at least seven (7) days prior to the hearing, which shall contain all of the following:

- (a) The social history of the child and family, including any relevant medical conditions;

### ***LOC Consideration***

The LOC considered the comments regarding requests for medical records and determined that option one (1) is the most fitting because the social history report of the disposition report should contain all necessary information, so it is not necessary to require the statement "including any relevant medical conditions" be added to the Law. If the disposition report does not contain

relevant medical records that are needed then the parties are able to utilize the discovery methods provided in section 708.13 of the Law to request that information. The LOC discussed the importance of those caring for the child to have access to information regarding the health of the child, but also discussed the fact that there is some responsibility on the person caring for the child to seek that information out. The LOC determined that requiring the requester to go through the discovery process will ensure that a trained and experienced judge is making the determination of what proper records that are not subject to confidentiality requirements by law will be shared.

#### **Comment 58 – Oneida Business Committee Accountability:**

**Jeanette Ninham (written):** I am also requesting should something happen to any of our children or families that this committee be accountable and held responsible to correct whatever needs to be fixed.

#### ***Response***

Many individuals, departments, and experts have been involved in the development of this Law, not just the LOC. Every avenue has been taken to ensure the quality of the law and that the implementation will be properly handled. Like all new developments, we cannot guarantee that some hiccups or unforeseen circumstances will not occur, but it is important to note that if there are any issues that arise the Legislative Procedures Act allows for a law to be amended and for any interested person to submit a written request for amendments for legislation. *[see Legislative Procedures Act section 109.5]*.

There is no recommended revision based on this comment. The LOC may consider whether the LOC should be held accountable and responsible if something happens to a child or family.

#### ***LOC Consideration***

The LOC agrees that there is revision required based on this comment.

#### **Comment 59 – Definition for ICWA :**

**(z) “ICWA” means the Indian Child Welfare Act, a federal law that governs jurisdiction over the removal of Native American children from their families.**

**Michelle L. Gordon (written):** Line 122 defines ICWA. The cite for ICWA should be given.

#### ***Response***

The commenter suggests adding the citation for the Indian Child Welfare Act (ICWA) in the definition. The following revision is recommended:

- (g) “ICWA” means the Indian Child Welfare Act, a federal law that governs jurisdiction over the removal of Native American children from their families as codified at 25 USC 1901.

The LOC can consider whether to include the revised definition of ICWA in the Law.

### *LOC Consideration*

The LOC determined that the recommended revision should be included in the Law to provide clarification on where ICWA is codified.

### **Comment 60 – Definition for WICWA:**

- (g) “WICWA” means the Wisconsin Indian Child Welfare Act, a codification of ICWA into state law.

**Michelle L. Gordon (written):** Line 195 defines WICWA. The cite for WICWA should be given.

### *Response*

The commenter suggests adding the citation for the Wisconsin Indian Child Welfare Act (WICWA) in the definition. The following revision is recommended:

- (g) “WICWA” means the Wisconsin Indian Child Welfare Act, a codification of ICWA into state law as codified in Wis. Stat. 48.028.

The LOC can consider whether to include the revised definition for WICWA in the Law.

### *LOC Consideration*

The LOC determined that the recommended revision should be included in the Law to provide clarification on where WICWA is codified.

### **Comment 61 – Definition for Reasonable Efforts:**

- (g) “Reasonable effort” means an earnest and conscientious effort to take good faith steps to provide the services ordered by the Court which takes into consideration the characteristics of the parent or child, the level of cooperation of the parent and other relevant circumstances of the case.

**Michelle L. Gordon (written):** Line 166 defines Reasonable Efforts. In ICWA cases county agencies are required to provide Active Efforts. While I’m aware we are not bound by ICWA, discussions amongst agencies have determined that is best practice to provide all families with Active Efforts, not just Native families. Therefore, it is my suggestion that we use and define active efforts as best practice and to set the bar amongst agencies.

## ***Response***

Active efforts is a requirement of the Indian Child Welfare Act (ICWA) and ICWA does not apply to cases that fall under tribal jurisdiction. Active efforts are used in ICWA to ensure that there is an “ongoing, vigorous, and concerted level of case work that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe, and that uses the available resources of the Indian child’s tribe, tribal and other Indian child welfare agencies, extended family members of the Indian child, other individual Indian child caregivers, and other culturally appropriate service providers.” [see Wis. Stat. 48.028(4)(g)]. Throughout the Law references are made to social and cultural values, conditions and way of life, and the purpose of developing this Law was to ensure that customs and traditions of the Nation are acknowledged when raising an Oneida child. The Law also directly utilizes the resources of the Nation. Therefore, it is recommended that “reasonable effort” remain in the law instead of “active effort.”

It is a policy determination for the LOC to decide whether reasonable or active efforts should be used in the Law. If the LOC decides that the term active efforts be used then the LOC should provide a definition.

## ***LOC Consideration***

The LOC considered the comment and determined that “reasonable efforts” should remain in the Law. The LOC discussed the fact that the idea of “active efforts” is already incorporated into the Law because the intent of developing the Law is to include Oneida culture and values throughout all child welfare proceedings. Throughout the Law there is the requirement that the child’s culture, heritage and traditions be considered, respected, and encouraged. [see *Child Welfare law section 708.3-1(e), 708.8-3(b), 708.30-4, 708.37-3(b), 708.39-3(b)*].

The LOC directed the LRO to communicate with the ICW Department to learn how the ICW Department intends to ensure that the culture, values and traditions of Oneida families are considered, respected and encouraged so this information can be included in community meetings.

## **Comment 62 – Definition for Stipulation:**

**(g) “Stipulation” means an agreement to do something.**

**Michelle L. Gordon (written):** Line 183 defines Stipulation, but is not a very “legal” definition. I suggest amending it to “An agreement concerning the rights and/or obligations of the parties.”

## ***Response***

The commenter suggests revising the definition for stipulation. The following revision is recommended:

(g) “Stipulation” means a formal legal acknowledgement and an agreement—agreement made between opposing parties prior to a pending hearing or trial to do something.

The LOC can consider whether to include the revised definition for stipulation in the Law.

### ***LOC Consideration***

The LOC determined that the recommend revision provided in the response should be made to the Law because it provides for more clarity.

### **Comment 63 – Appointment of Guardian ad Litem:**

**708.8-1. Appointment.** The appointment of a guardian ad litem shall be as follows:

(a) The Court may appoint a guardian ad litem for any child who is the subject of a child in need of protection or services proceeding;

**Michelle L. Gordon (written):** 708.8-1 at line 339 states “may appoint” a GAL. A GAL should be appointed in all cases. Suggest changing this to “shall”.

### ***Response***

The term “may” was used instead of the term “shall” to provide the Court flexibility and discretion on when to appoint a guardian ad litem for a child who is the subject of a child in need of protection and services proceeding. There may be some instances, like if a case is not contested by any party, or during the permanency review hearings that occur every six (6) month, in which the Court would determine it is not necessary to appoint a guardian ad litem.

The Law further clarifies that the Court is required to appoint a guardian ad litem appointed for any child who is the subject of a proceeding to terminate parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding, and for a child who is the subject of a contested guardianship proceeding [*see Child Welfare law section 708.8-1(b)*], and for a minor parent petitioning for the voluntary termination of their parental rights [*see Child Welfare law section 708.8-1(c)*].

It is a policy determination for the LOC to decide whether to provide the Court flexibility and discretion when deciding when it is appropriate to appoint a guardian ad litem or to require the Court to appoint a guardian ad litem for every case in which the child is the subject of a child in need of protection and services proceeding. The LOC can address the comment in the following ways:

1. The LOC can determine that the language should stay as it is currently drafted and provide the Court flexibility and discretion on when to appoint a guardian ad litem for a child who is the subject of a child in need of protection and services proceeding.
2. The LOC can determine that the Court should be required to appoint a guardian ad litem for every proceeding in which a child is in need of protection or services, and make the following revision:

The Court ~~may~~shall appoint a guardian ad litem for any child who is the subject of a child in need of protection or services proceeding;

### *LOC Consideration*

The LOC considered the comment and determined that the language should stay as it is currently drafted as “may appoint” because then the Court will be provided flexibility and discretion on when to appoint a guardian ad litem for a child who is the subject of a child in need of protection and services proceeding. The LOC determined that the Court would have the best judgment on when an appointment of a guardian ad litem is necessary, and then for those proceedings that may be uncontested, the Court and the parents will not have to incur a cost for a guardian ad litem that might not be necessary.

### **Comment 64 – Qualifications for a Guardian ad Litem:**

#### **708.8-2. Qualifications**

- (b) No person shall be appointed guardian ad litem in that proceeding who is:
- (1) an interested party;
  - (2) appearing as counsel in the proceeding on behalf of any party; or
  - (3) related to an interested party, an actual party, the Judge for the proceeding, or an appointing Judge by blood, marriage, adoption or related by a social tie that could be reasonable interpreted as a conflict of interest.

**Michelle L. Gordon (written):** 708.8-2(b)(1) at line 357 uses the terminology “interested party”. However, this terminology is not defined. This can be a vague term unless defined. It is my suggestion that a definition be provided.

### *Response*

A definition for the term “interested party” is not included in the Law because the term is used in its everyday and normal sense, meaning an individual who has an interest in the case or proceeding.

The LOC can address the comment in the following ways:

1. The LOC can decide to leave the Law as written and not include a definition for “interested party” because the term is used in its everyday and ordinary sense.
2. The LOC can decide to include a definition for “interested party” and include the following revision in the law:

**(bb) “Interested party” means an individual that has a recognizable interest in the matter.**

### *LOC Consideration*

The LOC considered the comment and determined that the vagueness comes not from the term “interested party” being undefined, but from the Law not being clear on what the intent of this provision is. The LOC discussed the fact that this provision intends to prevent any conflicts of

interest in a potential guardian ad litem so that only a neutral and unbiased guardian ad litem will be utilized. The LOC determined the following revisions should be made to the Law:

#### 708.8-2. *Qualifications*

- (b) No person shall be appointed guardian ad litem in that proceeding who ~~is~~:
  - (1) ~~an interested party~~ has a personal interest in the outcome of the case, a party to the proceeding, or any other interest that has the potential to corrupt a person's motivation or decision making, because of an actual or potential divergence between the person's self-interests, and the best interests of the case;
  - (2) appears ~~ing~~ as counsel or an advocate in the proceeding on behalf of any party; or
  - (3) ~~is~~ related to ~~an interested party, an actual~~ party of the proceeding, the Judge for the proceeding, or an appointing Judge by blood, marriage, adoption or related by a social tie that could be reasonably ~~be~~ interpreted as a conflict of interest.

#### Comment 65 – Compensation of a Guardians Ad Litem:

#### 708.8-2. *Qualifications.*

- (a) A guardian ad litem shall be an adult who:
  - (1) is at least twenty one (21) years of age;
  - (2) is currently certified as a guardian ad litem and in good standing;
  - (3) has never been convicted of a felony unless the person received a pardon or forgiveness; and
  - (4) has never been convicted of any crime against a child.
- (b) No person shall be appointed guardian ad litem in that proceeding who is:
  - (1) an interested party;
  - (2) appearing as counsel in the proceeding on behalf of any party; or
  - (3) related to an interested party, an actual party, the Judge for the proceeding, or an appointing Judge by blood, marriage, adoption or related by a social tie that could be reasonable interpreted as a conflict of interest.
- (c) A guardian ad litem may be recognized as certified by the Court if he or she:
  - (1) has completed guardian ad litem training provided by the Court, another Indian tribe, or a state; or
  - (2) is recognized as a certified guardian ad litem by another jurisdiction.

**708.8-4. *Compensation.*** The guardian ad litem shall be compensated at a rate that the Court determines is reasonable. The Court shall compensate the guardian ad litem for his or her fees. The parties shall reimburse the Court for the guardian ad litem fees. The Court may apportion the amount of reimbursement each party shall pay based on the ability to pay or assess the cost equally between the parties. The Court may determine an appropriate time frame for the reimbursement to occur. The Court may waive the guardian ad litem expense if the cost of the guardian ad litem will impose an immediate and substantial hardship on the parties.



**Jeanette Ninham (written):** This law also talks about GALS, and the court only has a few and they are also used for the child support cases. I am a GAL and I know that I sure do a lot more work than the state GAL's. I go to the home and see who is all in the home and talk to the families for hours at a time. I check medical history of the children and school records. I have never seen a state GAL do this. I would like to ask that the cost for the GAL service be increased to the same as the state.

### ***Response***

In Wisconsin a guardian ad litem (GAL) must be an attorney admitted to practice in the state of Wisconsin. *[see Wis. Stat. 767.407(3)]*. Wisconsin law allows for a GAL to be compensated at a rate that the court determines is reasonable. *[see Wis. Stat. 767.407(6)]*.

The Law does not require a GAL to be an licensed attorney, and allows a lay person to serve as a GAL as long as they meet the limited requirements described in section 708.8-2 of the Law. The Law states that the GAL shall be compensated at a rate that the Court determines is reasonable. *[see Child Welfare law section 708.8-4]*.

Currently, the Family Court compensates a GAL at the rate of twenty-five (25) dollars per hour, which is a high rate for a lay GAL. It is important to note that there is no mechanism to ensure the GAL's reported hours are accurate when compensating them. The Family Court does not collect GAL fees as a collection process has not been established, there is limited staff to handle the collection of GAL fees, and many families cannot afford to pay the GAL fees. Since GAL fees are not collected from the parties, fees are paid out to the GALs through the Family Court budget. An increase of the Oneida GAL fees to the rate paid by other courts will have a significant impact on the Family Court's budget.

It is a policy determination for the LOC to decide if the Court should determine the rate guardians ad litem are compensated at, if that rate should be determined by some other mechanism, or if the LOC would like to set the rate at which GALs will be compensated.

### ***LOC Consideration***

The LOC considered the comment and determined that the Law should stay as currently drafted, and the Court should determine the rate at which guardians ad litem are compensated. The LOC discussed the relation between the rates of compensation and the qualification requirements and the differences between the Oneida Family Court and county court. Discussion regarding the fact that lay guardians ad litem are not held to the same ethical and professional standards as attorney guardians ad litem. The LOC also made their determination based on the fact that compensation for guardian ad litem fees is unlikely in most cases, so since the fees are being compensated out of the Family Court's budget, the Family Court should be allowed to determine the rate. The LOC does not want to burden the Family Court's budget.

**Comments 66 through 67 – Guardianship for Certain Children in Need of Protection or Services:**



**Michelle L. Gordon (written):** 708.26 regarding Guardianship; I may have missed it, but I don't see anything regarding the appointment of a GAL on these, or that the appointment of the GAL from the CHIPS shall carryover to the guardianship proceeding. A GAL should be appointed to provide recommendations to the court on the child's best interests. It is my suggestion that the same GAL carryover to the guardianship action.

### ***Response***

The requirement of a guardian ad litem to carry on from the CHIPS proceeding to the guardianship proceeding would be a challenging provision to include in the law due to the fact that a guardian ad litem might not be willing or able to accept the case in the guardianship proceeding. The Law does already require that the Court appoint a guardian ad litem for a child who is the subject of a contested guardianship proceeding.

708.8-1(b) The Court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding, *and for a child who is the subject of a contested guardianship proceeding*;

There is no recommended revision based on this comment.

### ***LOC Consideration***

The LOC agrees there is no revision needed based on this comment since the Law already addresses this concern.

**Michelle L. Gordon (written):** Another comment on the guardianship section, is that the proposed guardian should be present at all hearings, and that the child's presence may be waived by the court.

### ***Response***

The Law already states that the child's presence may be waived by the Court, as stated by the following:

708.12-1. If the Court finds that it is in the best interest of the child, the Court may exclude the child from participating in a hearing conducted in accordance with this law.

It is a policy determination for the LOC to decide if the proposed guardian should be present at all hearings. The LOC can address this policy determination in two ways.

1. The LOC can determine that it is not necessary for the Law to require the proposed guardian to be present at all hearings and leave the Law as written.
2. The LOC can determine it is necessary for the Law to require the proposed guardian to be present at all hearings and make the following revision to the Law:

*708.27-4. Presence of the Proposed Guardian.* The proposed guardian shall be present at all guardianship hearings. The Court may waive the appearance requirement for the proposed guardian if the Court determines there is good cause.

### *LOC Consideration*

The LOC considered the comment and determined that the proposed guardian should be present at the hearings unless the Court decides to allow otherwise. The LOC determined to add the recommended language provided in option two (2) of the response.

### **Comment 68 – Taking a Child into Custody:**

**708.14-6. Holding a Child in Custody.** A child held in custody may be held in any of the following places as long as the places are in the child’s best interest and all people residing or regularly visiting the premises have cleared a background check:

- (a) The home of a relative, except that a child may not be held in the home of a relative that has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child, or any crime against a child, and the conviction has not been pardoned, forgiven, reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination;
- (b) A foster home;
- (c) A licensed group home;
- (d) A non-secure facility operated by a licensed child welfare agency;
- (e) A licensed private or public shelter care facility; or
- (f) The home of a person not a relative, if the placement does not exceed thirty (30) days, though the placement may be extended for up to an additional thirty (30) days by the Indian Child Welfare Worker, and if the person has not had a child care license refused, revoked, or suspended within the last two (2) years.

**Michelle L. Gordon (written):** 708.14-6 is Holding a Child in Custody. Subsection (f) states the child can be placed in the home of a person not a relative for no more than 30 days. However, subsection (b) lists foster home, which would likely be a non-relative. Does the 30 days referred to in (f) apply to (b). This should be clarified.

### *Response*

Section 708.14-6(b) references a licensed foster home while section 708.14-6(f) references an unlicensed home. The following revision is recommended for clarification:

708.14-6. *Holding a Child in Custody.* A child held in custody may be held in any of the following places as long as the places are in the child's best interest and all people residing or regularly visiting the premises have cleared a background check:

- (a) The home of a relative, except that a child may not be held in the home of a relative that has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child, or any crime against a child, and the conviction has not been pardoned, forgiven, reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination;
- (b) A licensed foster home;
- (c) A licensed group home;
- (d) A non-secure facility operated by a licensed child welfare agency;
- (e) A licensed private or public shelter care facility; or
- (f) The home of a person not a relative or a non-licensed foster home, if the placement does not exceed thirty (30) days, though the placement may be extended for up to an additional thirty (30) days by the Indian Child Welfare Worker, and if the person has not had a child care license refused, revoked, or suspended within the last two (2) years.

The LOC can consider whether to include the recommended revision for clarification purposes.

### ***LOC Consideration***

The LOC considered the comment and determined that this section should be clarified. The LOC decided to add the term "licensed" to section 708.14-6(b) so that it reads as follows:

- (b) A licensed foster home;

The LOC declined to make the revision to section 708.14-6(f) and felt that the revision to section 708.14-6(b) clearly defined the distinction between the two subsections.

### **Comments 69 through 70 – Emergency Custody Hearing:**

**708.15-4. Prior to the start of the hearing, the Court shall provide a copy of the petition to the parent, guardian, and legal custodian if present, and to the child if he or she is twelve (12) years of age or older.**

**Michelle L. Gordon (written):** 708.15-4 states that a copy of the petition should be provided to the child if 12 or older. In State courts this is because they are provided with their own counsel to represent them, not a GAL. But I do not see in our law that we are providing counsel to this age group. This should be clarified and also goes back to my comment 6. GAL's should be appointed in all cases, specifically if we are not providing counsel. Then, in this case, the GAL would receive a copy of the petition and explain it to their ward.

## ***Response***

Throughout the Law a child who is aged twelve (12) years or older:

- can sign the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide [*see Child Welfare law section 708.5-2(j)*];
- can request that good cause be found to go outside the placement preferences required in section 708.10 of the Law [*see Child Welfare law section 708.10-3(a)(1)*];
- must be notified by the Indian Child Welfare Worker of the date, time, and place and the nature and possible outcomes of an emergency custody hearing [*see Child Welfare law section 708.14-10*];
- must receive from the Court a copy of the petition for the emergency custody hearing prior to the hearing [*see Child Welfare law section 708.15-4*]; and
- must receive from the Court a copy of the dispositional order [*see Child Welfare law section 708.20-7*].

The law recognizes that a child aged twelve (12) years or older can be more involved in their child welfare case, and should be kept knowledgeable on what is happening, and can even make requests of the Court in some circumstances. The requirement to provide a child aged twelve (12) years or older with a copy of court documents does not negate the guardian ad litem's responsibility to explain the court proceedings to the child, if a guardian ad litem is appointed for that specific hearing. [*see Child Welfare law section 708.8-3(d)*]. The Court will use its discretion to determine when it is necessary and appropriate to appoint a guardian ad litem for a child in accordance with section 708.8-1 of the Law.

The commenter is correct in stating that the Law does not require counsel to be provided to children, or any other party involved in a child welfare matter.

The LOC can consider whether the requirement that a child aged twelve (12) years or older be provided certain court documents remain in the Law.

## ***LOC Consideration***

The LOC determined that the provisions regarding the requirement to provide a child aged twelve (12) years or older with certain court documents should remain in the Law. The LOC stated that there is no harm in providing a child aged twelve (12) years or older with certain documents or allowing those children to be more involved in their case. The LOC wanted to make clear that providing a child aged twelve (12) years or older with certain court documents does not negate the responsibility of the guardian ad litem to explain the court proceeding and documents to the child. The LOC determined that for those cases where a child does not have a guardian ad litem assigned, language should be added to the Law which describes the responsibilities of the ICW Department to require the ICW Department worker to explain the current court proceeding to the child. The LOC determined the follow revision should be included in the Law:

## **708.7. Indian Child Welfare Department Duties and Responsibilities**

708.7-1. *Indian Child Welfare Worker.* The Indian Child Welfare Worker shall carry out the duties and responsibilities set forth in this law which include, but are not limited to the following:

(s) Explain the court proceedings to the child in language and terms appropriate to the child's age and maturity level when a guardian ad litem is not appointed for a child;

**708.15-9. An order to hold a child in custody may be re-heard if, in the Court's discretion, good cause is found, whether or not counsel was present.**

**Michelle L. Gordon (written):** 708.15-9 at line 615 states that an order may be re-heard if good cause is found. But re-heard based on what; someone's motion? How does it come before the court to be re-heard. This should be clarified.

### ***Response***

The following revision is recommended:

708.15-9. An order to hold a child in custody may be re-heard upon motion of any party if, in the Court's discretion, good cause is found, whether or not counsel was present.

The LOC may consider including the recommended revision clarifying how an order is re-heard in the Law.

### ***LOC Consideration***

The LOC agrees to add the recommended revision to the Law.

## **Comment 71 – Petition for a Child in Need of Protection or Services:**

**708.16-4. A petition may be amended at any time at the discretion of the Court.**

**Michelle L. Gordon (written):** 708.16-4 at line 647 states that a petition may be amended at any time, but does not speak to service upon all parties. A sentence should be added regarding the required service upon all the parties.

### ***Response***

The Law states that petitions for a child in need of protection or service may be given to the parties directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure. [see *Child Welfare law section 708.11-1*].

The following revision is recommended for clarity:

708.16-4. A petition may be amended at any time at the discretion of the Court. An amended petition may be given to the parties directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

The LOC can consider including the recommended revision clarifying that all amended petitions should be served upon all the parties directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

### *LOC Consideration*

The LOC determined that the recommended language should be added to provide for more clarity in the Law.

### **Comment 72 – Plea Hearing for a Child in Need of Protection or Services:**

**708.17-4. Before accepting an admission or plea of no contest of the alleged facts in a petition, the Court shall:**

- (a) Address the parties present and determine that the plea or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes;**
- (b) Establish whether any promises or threats were made to elicit the plea or admission; and**
- (c) Make inquiries that establish a factual basis for the plea or admission.**

**Michelle L. Gordon (written):** 708.17-4. Discusses admission or plea of no contest. Subsection (a) at line 657 states “the plea or admission”. It should clarify, and state “the plea of no contest or admission”.

### *Response*

The LOC can address this comment in two ways:

1. The LOC can decide to keep the Law as written since section 708.17-4 is clear that the plea referenced in this section is a “plea of no contest,” even if the following subsections then state simply “plea.”
2. The LOC can clarify the matter with the following revision:

708.17-4. Before accepting an admission or plea of no contest of the alleged facts in a petition, the Court shall:

- (a) Address the parties present and determine that the plea of no contest or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes;
- (b) Establish whether any promises or threats were made to elicit the plea of no contest or admission; and

(c) Make inquiries that establish a factual basis for the plea of no contest or admission.

### *LOC Consideration*

The LOC decided that the recommended revision found in option two (2) of the response should be included in the Law to provide more clarity, and that “of no contest” should be added after “plea” in section 708.14-4.

### **Comment 73 – Dispositional Hearing for a Child in Need of Protection and Services:**

**708.20-4. Dispositional Orders.** The Court’s dispositional order shall be in writing and shall contain:

(d) If the child is placed outside the home of his or her parent, guardian, or legal custodian, a designation of the amount of child support, if any, to be paid;

**Michelle L. Gordon (written):** Line 779 as part of the dispositional order has the court ordering an amount for child support. However, elsewhere in the law this is forwarded to child support and the court handling child support to deal with that issue. It is usually handled as a separate matter and I suggest it should remain separate. I suggest deleting 708.20-5(d).

### *Response*

It is recommended that section 708.20-4(d) be removed from the Law. Through conversations with the ICW Department, the Nation’s Child Support Agency, and the Family Court, it has been determined that child welfare issues will be kept separate from child support issues and the relationship between the two matters will be handled internally. The LOC can consider whether they would like to remove this section from the Law.

### *LOC Consideration*

The LOC determined that section 708.20-4(d) be removed from the Law because the relationship between child welfare cases and child support cases will be handled internally between departments.

### **Comment 74 – Change in Placement:**

**708.22-1.** The Department, the Nation’s Child Welfare attorney, or a party to the dispositional order may request a change in the placement of the child who is the subject of the dispositional order.

**708.22-4.** The request for a change in placement shall be submitted to the Court. The Court may propose a change in placement on its own motion.



**Michelle L. Gordon (written):** Line 906 which is 708.22-1 states a request for change in placement may be made, but doesn't say how; such as by motion. I suggest such language be placed in this section. Look also at 708.22-4 regarding this same concern (line 918)

### ***Response***

The following revision is recommended:

708.22-1. The Department, the Nation's Child Welfare attorney, or a party to the dispositional order may request a change in the placement of the child who is the subject of the dispositional order by filing a motion with the Court. The Court may also propose a change in placement on its own motion.

~~708.22-4. The request for a change in placement shall be submitted to the Court. The Court may propose a change in placement on its own motion.~~

The LOC can consider whether to include the recommended revision clarifying that a change in placement is requested by filing a motion with the Court.

### ***LOC Consideration***

The LOC considered the comment and decided to include the recommended revision in the Law to provide clarity on the how a request for a change in placement may be made.

### **Comment 75 – Revision of Dispositional Orders:**

**708.24-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or Court proposal indicates that new information is available that affects the advisability of the Court's dispositional order, unless the parties file a signed stipulation and the Court approves.**

**Michelle L. Gordon (written):** 708.23-3 at Line 972 states that a hearing on revision for dispositional orders is if new information is available. But this should also include a hearing shall be held if a party objects to the revised dispositional orders. The parties should be given due process to be heard and object to any potential revisions.

### ***Response***

The commenter references the incorrect citation for the section of the Law that discusses revisions of dispositional orders, so section 708.24-3 will be referenced in this response.

The commenter states that a hearing should be held if any party objects to a revised dispositional order, and not just when new information is available, but the commenter is misinterpreting this section because the revision of a dispositional order will only occur when there is new information available. A party, or the Court, may request a revision in the dispositional order that does not involve a change in placement. *[see Child Welfare law section 708.24-1]*. A request for



a change in placement is governed by section 708.22 of the Law. The request for the revision must state the nature of the proposed revision and what new information is available that affects the advisability of the Court's disposition. *[see Child Welfare law section 708.24-2]*. The Court will hold a hearing on the matter if the request indicates that new information is available that affects the advisability of the Court's dispositional order. *[see Child Welfare law section 708.24-3]*. If there is not new information then a hearing will not be held, and the Court will not consider the revision. The only other way the Court will consider a revision is if the parties file a stipulation and the Court approves, but then the parties would be in agreement and there would be no objections to the revision. *[see Child Welfare law section 708.24-3]*.

There is no recommended revisions based on this comment.

### ***LOC Consideration***

The LOC agreed that there is no revision necessary based on this comment because the Law is clear that a dispositional order will only be revised if there is a hearing on the matter which allows all parties to be heard and object to any potential revisions, or if the parties stipulate to revising the dispositional order.

### **Comments 76 through 77 – Contempt:**

**708.31-6(c) If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.**

**Michelle L. Gordon (written):** Line 1213, 708.30-6 (c) allows the court to find a party in contempt if they don't comply with the agreement. First it should cite the law where the contempt provisions are found; stating "pursuant to \_\_\_\_." Second, after the last word in the sentence, "contempt", the following or something similar should be added; "and any subsequent relevant orders to amend the agreement as necessary if there is a continuing refusal to abide by the agreement." The court could also send them back to peacemaking.

**708.42-3. If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.**

**Michelle L. Gordon (written):** 708.41-3. Same comments as comment 19. *[Comment 19 was "Line 1213, 708.30-6 (c) allows the court to find a party in contempt if they don't comply with the agreement. First it should cite the law where the contempt provisions are found; stating "pursuant to \_\_\_\_." Second, after the last word in the sentence, "contempt", the following or something similar should be added; "and any subsequent relevant orders to amend the*

*agreement as necessary if there is a continuing refusal to abide by the agreement.” The court could also send them back to peacemaking.”].*

### **Response**

In discussing that an individual may be found in contempt for non-compliance with an agreement the commenter references the incorrect citation for the section of the Law that discusses the voluntary termination of parental rights, so section 708.31-6(c) will be referenced in this response. The commenter also references the incorrect citation for the section of the Law that discusses the voluntary termination of parental rights, so section 708.42-3 will be referenced in this response.

The following revision is recommended:

### **708.31. Voluntary Termination of Parental Rights**

708.31-6. The parties may agree to attend peacemaking to establish an agreement regarding post-voluntary termination of parental rights contact with a birth parent, birth sibling, or other birth relative of the child.

- (c) If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.
- (d) The Court may not revoke a termination of parental rights order or an order of adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a post-voluntary termination contact agreement; however, the parties may return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

### **708.42. Non-Compliance with a Residual Rights Agreement**

708.42-3. If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

708.42-4. The Court may not revoke a termination of parental rights order or an order of customary adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a residual rights agreement. However, the parties may return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to an order is in the best interests of the child.

The LOC can consider whether the recommended revisions should be included in the Law.

### **LOC Consideration**

The LOC considered the comments and determined that the recommended revisions in the response should be included in the Law. This addition to the Law will provide clarity on the matter and allow the Court flexibility in amending an order if it is in the best interests of the child.

### **Comment 78 – Adoption:**

**Michelle L. Gordon (written):** Adoptions at 708.38. I did not see a provision in there for the handling of step-parent adoptions. If we are going to be handling voluntary TPR's and mention step-parent adoptions, there should be provisions for step-parent adoptions. This should be added to the law.

### ***Response***

Step-parent adoptions are already included under this Law and will be processed through the same adoption proceeding as any other adoption. The Law states that a child may be adopted if the person filing a petition for adoption is the spouse of the child's parent and the child's other parent is deceased or the parental rights of the child's other parent with respect to the child have been terminated. [see *Child Welfare law section 708.40-1(d)*]. Additionally, the Law clarifies that a spouse, if the other spouse is the parent of the child, is eligible to adopt a child who falls under the jurisdiction of this law. [see *Child Welfare law section 708.40-2(b)*]. Step-parent adoptions would follow the procedure that is set out in section 708.41 of the Law.

The LOC may consider if step-parent adoptions are adequately addressed in the Law.

### ***LOC Consideration***

The LOC determined that step-parent adoptions are clearly included in the Law, but the term “spouse of the child’s parent” is used instead of step-parent. There is no revision necessary based on this comment.

### **Comments 79 through 80 – Adoption:**

**708.39-2(b) The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and his or her Oneida heritage, if applicable;**

**708.39-3(d) The child shall be entitled to information regarding his or her biological family upon reaching the age of majority.**

**Bonnie Pigman (oral):** Second item is, the law references children obtaining information about their family upon reaching age eighteen when those children have been adopted out. The law should direct the individuals to access the Court or the ICW files. So I think those pieces are missing. That’s it, thank you.

**Susan White (written):** When children go back to find family they should have access to court or ICW records to assist them. The law references children obtaining information about their family upon reaching age 18 when those children have been adopted. The law should direct those individuals to access the court or ICW file.

### *Response*

The commenters recommend clarifying that an individual should be directed to the Court or ICW Department files if looking to obtain information on their biological family. The following revisions are recommended:

708.39-2(b) The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and his or her Oneida heritage, if applicable. The child may obtain this information from files maintained by the Court or Department;

708.39-3(~~de~~) The child shall be entitled to information regarding his or her biological family upon reaching the age of majority. The child may obtain this information from files maintained by the Court or Department.

The LOC can consider whether or not to include the recommended revision.

### *LOC Consideration*

The LOC determined that the recommended language should be added to the Law because the language provides clarity to the reader on where this information will be held and where it should be searched for.

The LOC directed the LRO to communicate with the ICW Department and the Oneida Family Court to discuss how adoption records will be retained.

**Title 7. Children, Elders and Family - Chapter 708****~~CHILD WELFARE~~ CHILDREN'S CODE****~~Latiksa'shúha~~ Laotilihwá'ke****~~the children – their issues~~****~~Latiksa'shúha~~ laotilihwá'ke laotiyanl'hsla'****~~children's welfare law~~**

708.1. Purpose and Policy	708.2325. Trial Reunification
708.2. Adoption, Amendment, Repeal	
708.3. Definitions	708.2426. Revision of Dispositional Orders
708.4. Scope	708.2527. Extension of Dispositional Orders
708.5. Jurisdiction	708.2628. Continuation of Dispositional Orders
708.6. Nation's Child Welfare Attorney	708.2729. Guardianship for Certain Children in Need of Protection or Services
708.7. Indian Child Welfare Department Duties and Responsibilities	708.2830. Revisions of Guardianship Order
708.8. Guardian ad litem	708.2931. Termination of Guardianship
708.9. Advocate	708.3032. Termination of Parental Rights
708.10. <b>Cultural Wellness Facilitator and Healer</b>	708.3133. Voluntary Termination of Parental Rights
708.4011. Order of Placement Preferences	708.3234. Grounds for Involuntary Termination of Parental Rights
708.4112. Notice of Petition	708.3335. Petition for Termination of Parental Rights
708.4213. Hearings (General)	708.3436. Initial Hearing on the Termination of Parental Rights Petition
708.4314. Discovery and Records	708.3537. Fact Finding Hearing for a Termination of Parental Rights
708.4415. Taking a Child into Custody	708.3638. Department's Termination of Parental Rights Report
708.4516. Emergency Custody Hearing	708.3739. Standards and Factors
708.4617. Petition for a Child in Need of Protection or Services	708.3840. Dispositional Hearings for Termination of Parental Rights
708.18. <b>Consent Decree</b>	708.3941. Adoption
708.4719. Plea Hearing for a Child in Need of Protection or Services	708.4042. Adoption Criteria and Eligibility
708.4820. Fact-finding Hearing for a Child in Need of Protection or Services	708.4143. Adoption Procedure
708.4921. Department's Disposition Report for a Child in Need of Protection or Services	708.4244. Non-Compliance with a Residual Rights Agreement
708.2022. Dispositional Hearing for a Child in Need of Protection or Services	708.4345. Peacemaking and Mediation
708.2423. Permanency Plans	708.4446. Appeals
708.2224. Change in Placement	708.4547. Liability

1

**2 708.1. Purpose and Policy**

3 708.1-1. *Purpose.* The purpose of this law is to provide for the welfare, care, and protection of  
4 Oneida children through the preservation of the family unit, while recognizing that in some  
5 circumstances it may be in the child's best interest to not be reunited with his or her family.  
6 Furthermore, this law strengthens family life by assisting parents in fulfilling their  
7 responsibilities as well as facilitating the return of Oneida children to the jurisdiction of the  
8 Nation and acknowledging the customs and traditions of the Nation when raising an Oneida  
9 child.

10 708.1-2. *Policy.* It is the policy of the Nation to ensure there is a standard process for  
11 conducting judicial proceedings and other procedures in which children and all other interested  
12 parties are provided fair hearings in addition to ensuring their legal rights are recognized and  
13 enforced, while protecting the public safety.

14

**15 708.2. Adoption, Amendment, Repeal**

16 708.2-1. This law was adopted by the Oneida Business Committee by resolution BC-\_\_-\_\_-\_\_-  
17 \_\_.

708.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

708.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

708.2-4. In the event of a conflict between a provision of this law and a provision of another law ~~or law~~, the provisions of this law shall control. Provided that, this law repeals the following:

- (a) Resolution # BC-09-25-81 *Oneida Child Protective Board Ordinance*;
- (b) Resolution # BC-10-07-81-A *Appointing Members to the Oneida Child Protective Board*;
- (c) Resolution # BC-05-24-84-C *Definition of Extended Family Member*;
- (d) Resolution # BC-01-14-15-A *Amendment of Oneida Child Protective Board Ordinance*;
- (e) Resolution # BC-05-13-15 *Indian Child Welfare Act Policy*; and
- (f) Resolution # BC-12-10-03-A *Oneida Child Protective Boards Stipends*.

708.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

### 708.3. Definitions

708.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Abuse" means any of the following:

- (1) Physical injury inflicted on a child by other than accidental means;
- (2) Sexual assault;
- (3) Sexual exploitation of a child;
- (4) Prostitution or trafficking of a child;
- (5) Causing a child to view or listen to sexual activity or sexually explicit materials;
- (6) Exposing a child to the manufacture, sale, or use of controlled substances; and/or
- (7) Emotional damage for which the child's parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment or take steps to address the issue.

(b) "Advocate" means a person who is a non-attorney presented to the Court as the representative or advisor to a party.

(c) "Alcohol and other drug abuse impairment" means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcoholic beverages or controlled substances to the extent that the person's health is substantially affected or endangered or the person's social or economic functioning is substantially disrupted.

(d) "Attorney" means a person trained and licensed to represent another person in Court, to prepare documents and to give advice or counsel on matters of law.

(e) "Best interest of the child" means the interest of a child to:

- (1) Have a full, meaningful, and loving relationship with both parents and family as much as possible;
- (2) Be free from physical, sexual and emotional abuse;



(3) Be raised in conditions that foster and encourage the happiness, security, safety, welfare, physical and mental health, and emotional development of the child;

(4) Receive appropriate medical care;

(5) Receive appropriate education;

(6) Be raised in conditions which maximize the chances of the child becoming a contributing member of society; and

(7) Be raised in an environment that is respectful of the child's race(s), culture(s), and heritage(s).

(f) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(g) "Child" means a person who is less than eighteen (18) years of age.

~~(h)~~ (h) "Clear and convincing evidence" means that a particular fact is substantially more likely than not to be true.

~~(i)~~ (i) "Counsel" means an attorney or advocate presented to the Court as the representative or advisor to a party.

~~(j)~~ (j) "Court" means the Oneida Nation Family Court, which is the branch of the Oneida Nation Judiciary that has the designated responsibility to oversee family matters.

~~(k)~~ (k) "Court of competent jurisdiction" means a state or tribal court that has jurisdiction and authority to do a certain act or hear a certain dispute.

~~(l)~~ (l) "Department" means the Oneida Nation Indian Child Welfare Department.

~~(m)~~ (m) "Disposition" means the Court's final ruling or decision on a case or legal issue.

~~(n)~~ (n) "Dispositional hearing" means a hearing for the Court to make its final determination of a case or issue.

~~(o)~~ (o) "Emotional damage" means harm to a child's psychological or intellectual functioning evidenced by one (1) or more of the following characteristics exhibited to a severe degree:

(1) anxiety;

(2) depression;

(3) withdrawal;

(4) outward aggressive behavior; and/or

(5) a substantial and observable change in behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development.

~~(p)~~ (p) "Expert" means a person with special training, experience, or expertise in a field beyond the knowledge of an ordinary person.

~~(q)~~ (q) "Extended family" means a person who has reached the age of eighteen (18) and who is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first, second, third or fourth cousin, or stepparent.

~~(r)~~ (r) "Fact-finding hearing" means a hearing for the Court to determine if the allegations in a petition under this law are proved by clear and convincing evidence.

~~(s)~~ (s) "Fictive kin" means any person or persons who, to the biological parents of the child at issue, have an emotional tie to that parent wherein they are like family.

~~(t)~~ (t) "Foster home" means any home which is licensed by Department and/or applicable licensing agency and maintained by any individual(s) suitable for placement of children when taken into custody or pending court matters.

~~(t)~~(u) “Good cause” means adequate or substantial grounds or reason to take a certain action, or to fail to take an action.

~~(u)~~(v) “Group home” means any facility operated by a person required to be licensed by the Department and/or applicable licensing agency for the care and maintenance of five (5) to eight (8) children.

~~(v)~~(w) “Guardian” means any person, agency or department appointed by the Court to care for and manage the child in a particular case before the Court. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

~~(w)~~(x) “Guardian ad litem” means a person appointed by the Court to appear at any peacemaking, mediation, or hearing and tasked with representing the best interest of the person appointed for.

~~(x)~~(y) “Holiday” means any holiday recognized by the Nation as identified in the Nation’s laws, rules and policies governing employment.

~~(y)~~(z) “ICWA” means the Indian Child Welfare Act, a federal law that governs jurisdiction over the removal of Native American children from their families.

~~(z)~~(aa) “Indian Child Welfare Worker” means a person employed by the Nation in the Indian Child Welfare Department tasked with the responsibility to carry out the duties, objectives and provisions of this law as codified at 25 USC 1901.

~~(aa)~~(bb) “Legal custodian” means any person other than a parent or guardian to whom legal custody of a child has been granted by court order and has the rights and responsibilities for the following:

(1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;

(2) To protect, educate and discipline the child so long as it is in the child’s best interest; and

(3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.

~~(bb)~~(cc) “Mediation” means a method of dispute resolution that involves a neutral third party who tries to help disputing parties reach an agreement.

~~(cc)~~(dd) “Nation” means the Oneida Nation.

~~(dd)~~(ee) “Neglect” means failure, refusal, or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

~~(ee)~~(ff) “Parent” means the biological or adoptive parent of a child.

~~(ff)~~(gg) “Peacemaking” means a method of dispute resolution that is based on traditional methods of resolving disputes and addresses the needs of rebuilding relationships between people.

~~(gg)~~(hh) “Permanency Plan” means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

~~(hh)~~(ii) “Physical injury” includes, but is not limited to, any of the following:

(1) lacerations;



- (2) fractured bones;
- (3) burns;
- (4) internal injuries;
- (5) severe or frequent bruising;
- (6) bodily injury which creates a substantial risk of death;
- (7) bodily injury which causes serious permanent disfigurement;
- (8) bodily injury which causes a permanent or protracted loss or impairment of the function of any bodily member or organ; or
- (9) any other serious bodily injury.

~~(ii)~~(jj) "Plea hearing" means a hearing to determine whether any party wishes to contest a petition filed under this law.

~~(jj)~~(kk) "Probable cause" means there are sufficient facts and circumstances that would lead a reasonable person to believe that something is true.

~~(kk)~~(ll) "Reasonable effort" means an earnest and conscientious effort to take good faith steps to provide the services ordered by the Court which takes into consideration the characteristics of the parent or child, the level of cooperation of the parent and other relevant circumstances of the case.

~~(ll)~~(mm) "Relative" means any person connected with a child by blood, marriage or adoption.

~~(mm)~~(nn) "Reservation" means all the land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

~~(nn)~~(oo) "Shelter care facility" means a non-secure place of temporary care and physical custody for children, licensed by the Department and/or applicable licensing agency.

~~(oo)~~(pp) "Social history" means the social, economic, cultural and familial aspects of a person and how those aspects affect the person's functioning and situation in life.

~~(pp)~~(qq) "Special treatment or care" means professional services which need to be provided to a child or family to protect the well-being of the child, prevent out-of-home placement, or meet the needs of the child.

~~(qq)~~(rr) "Stepparent" means the spouse or ex-spouse of a child's parent who is not a biological parent of the child.

~~(rr)~~(ss) "Stipulation" means a formal legal acknowledgement and agreement ~~to do something~~ made between opposing parties prior to a pending hearing or trial.

~~(ss)~~(tt) "Substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of a child.

~~(tt)~~(uu) "Termination of parental rights" means that, pursuant to a court order, all rights, powers, privileges, immunities, duties and obligations existing between parent and child are permanently severed.

~~(uu)~~(vv) "Treatment plan" means a plan or set of conditions ordered by the Court identifying concerns and behaviors of a parent, guardian or legal custodian that resulted in a child to be in need of protection or services, and the treatment services, goals and objectives to address and remedy the concerns and behaviors of the parent, guardian or legal custodian.

(vv)(ww) “Warrant” means an order issued by a court commanding a law enforcement officer to perform some act incident to the administration of justice.

(ww)(xx) “WICWA” means the Wisconsin Indian Child Welfare Act, a codification of ICWA into state law as codified in Wis. Stat. 48.028.

#### 708.4. Scope

708.4-1. This law shall apply to all child welfare cases and legal proceedings in which the Nation has jurisdiction. Nothing in this law is meant to restrict or limit another court of competent jurisdiction from hearing a matter involving an Indian child.

~~708.4-3. The Nation shall intervene in all ICWA/WICWA cases involving a child that is enrolled or eligible for enrollment unless such intervention would be impracticable under the circumstances of the case as determined by the Department.~~

#### 708.5. Jurisdiction

708.5-1. *Personal Jurisdiction.* The Court shall have personal jurisdiction over the following individuals:

(a) *Jurisdiction over an Oneida Child.* The Court shall have personal jurisdiction over any child who is present or resides within the boundaries of Brown and Outagamie County and is enrolled or eligible for enrollment in the Nation.

(b) *Jurisdiction over a Non-Oneida Child.* The Court shall have personal jurisdiction over any child not enrolled or eligible for enrollment in the Nation who is present or resides within the boundaries of the Reservation and is a sibling of a child that is enrolled or eligible for enrollment in the Nation if the child's parent(s), guardian or legal custodian consents to the jurisdiction of the Court. Consent to the jurisdiction of the Court can be given by any of the following:

(1) The parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with written consent to the jurisdiction of the Court; or

(2) The Court establishes on the record that the parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with verbal consent to the jurisdiction of the Court.

708.5-2. *Jurisdiction over Children Alleged to be in Need of Protection or Services.* The Court shall have jurisdiction over a child alleged to be in need of protection or services if personal jurisdiction has been established and the child:

(a) is without a parent or guardian;

(b) has been abandoned;

(c) has a parent that relinquished custody of the child pursuant to the Nation's laws or state law and has no other parent available to provide necessary care;

(d) has been the victim of abuse, including injury that is self-inflicted or inflicted by another;

(e) is at substantial risk of becoming the victim of abuse, including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

(f) has a parent or guardian who signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child, and the child has no other parent available to provide necessary care;

(g) has a guardian who is unable or needs assistance to care for or provide necessary special treatment or care for the child, but is unwilling or unable to sign the petition requesting jurisdiction under this subsection;

(h) has been placed for care or adoption in violation of the Nation's laws or state law;

(i) is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;

(j) is at least twelve (12) years of age, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;

(k) has a parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

(l) has a parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;

(m) is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to improve the symptoms;

(n) is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or

(o) is non-compliant with the Nation's or State's immunization laws.

708.5-3. *Jurisdiction over other Matters Relating to Children.* If jurisdiction has been established under section 708.5-1 and section 708.5-2 the Court may:

(a) terminate parental rights to a child;

(b) appoint, revise, and/or remove a guardian; and

(c) hold adoption proceedings.

708.5-4. *Transfer of Cases from other Courts.* If personal jurisdiction has been established the Court has jurisdiction over any action transferred to the Court from any court of competent jurisdiction.

(a) While a case is being transferred to the Court from another court, any time limits established by this law shall be tolled until the next hearing on the matter before the Court.

708.5-5. *Transfer of Cases to other Courts.* The Court may transfer a case under this law to a court of competent jurisdiction where the other court has a significant interest in the child and the transfer would be in the best interest of the child.

## **708.6. Nation's Child Welfare Attorney**

708.6-1. A Child Welfare attorney shall represent the Nation in all proceedings under this law. The Child Welfare attorney shall be one of the following:

(a) An attorney from the Oneida Law Office;

(b) An attorney contracted by the Oneida Law Office; or

(c) An attorney contracted by the Department.

## **708.7. Indian Child Welfare Department Duties and Responsibilities**

708.7-1. *Indian Child Welfare Worker.* The Indian Child Welfare Worker shall carry out the duties and responsibilities set forth in this law which include, but are not limited to the following:

(a) Receive, examine, and investigate complaints and allegations that a child is in need of protection or services for the purpose of determining the appropriate response under this law, which may include notifying law enforcement;

(b) Receive referral information, conduct intake inquiries, and determine whether to initiate child welfare proceedings;

(c) Determine whether a child should be held pursuant to the emergency provisions of this law;

(d) Make appropriate referrals of cases to other agencies when appropriate, and share information with other agencies if their assistance appears to be needed or desirable;

(e) Maintain records;

(f) Enter into informal dispositions with families;

(g) Refer counseling or any other functions or services to the child and/or family as designated by the Court;

(h) Identify and develop resources within the community that may be utilized by the Department and Court;

(i) Make reasonable efforts to obtain necessary services for the child and family and investigate and develop resources for the child and family to utilize;

(j) Accept legal custody of children when ordered by the Court;

(k) Make reports and recommendations to the Court;

(l) Make recommendations to the Nation's Child Welfare attorney;

(m) Request transfer from state court to the Nation's court when appropriate;

(n) Perform any other functions ordered by the Court within the limitations of the law;

(o) Develop appropriate plans and conduct reviews;

(p) Negotiate agreements for services, record sharing, referral, and funding for child family service records within the Department;

(q) Provide measures and procedures for preserving the confidential nature of child and family service records within the Department;

~~(r)~~ Participate in continuing training, conferences and workshops pertinent to child welfare issues; ~~and~~

~~(s)~~ Explain the court proceedings to the child in language and terms appropriate to the child's age and maturity level when a guardian ad litem is not appointed for a child;

~~(t)~~ Maintain a knowledge and understanding of all relevant laws and regulations.

708.7-2. *Department.* In performing the duties set forth in this law, the Department shall:

(a) Identify and refer parties to resources in the community calculated to resolve the problems presented in petitions filed in Court, such as the various psychiatric, psychological therapeutic, counseling and other social services available within and outside the Nation when necessary;

(b) Identify and refer parties to resources in the community designed to enhance the child's potential as a member of the Nation;

- (c) Investigate, inspect, and license foster homes, and monitor and supervise foster homes and children in foster care;
- (d) Adhere to the placement preference order stated in section 708.10; and
- (e) Enter into memorandums of understanding and/or agreement with the Oneida Trust Enrollment Committee and/or Department, Oneida Police Department, Oneida Nation Child Support Agency and any other appropriate department in order to carry out the provisions of this law;
- (f) Share information with other social service and law enforcement agencies; and other entities of the Nation as it pertains to children under the jurisdiction of this law.

## 708.8. Guardian ad litem

708.8-1. *Appointment.* The appointment of a guardian ad litem shall be as follows:

- (a) The Court may appoint a guardian ad litem for any child who is the subject of a child in need of protection or services proceeding;
- (b) The Court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding, and for a child who is the subject of a contested guardianship proceeding;
- (c) The Court shall appoint a guardian ad litem for a minor parent petitioning for the voluntary termination of their parental rights; and
- (d) A guardian ad litem may be appointed for any other circumstance the Court deems necessary.

708.8-2. *Qualifications.*

- (a) A guardian ad litem shall be an adult who:
  - (1) is at least twenty one (21) years of age;
  - (2) is currently certified as a guardian ad litem and in good standing;
  - (3) has never been convicted of a felony unless the person received a pardon or forgiveness; and
  - (4) has never been convicted of any crime against a child.
- (b) No person shall be appointed guardian ad litem in that proceeding who ~~is~~:
  - (1) an interested party has a personal interest in the outcome of the case, a party to the proceeding, or any other interest that has the potential to corrupt a person's motivation or decision making, because of an actual or potential divergence between the person's self-interests, and the best interests of the case;
  - (2) appears ~~ing~~ as counsel or an advocate in the proceeding on behalf of any party; or
  - (3) is related to ~~an interested party, an actual~~ party of the proceeding, the Judge for the proceeding, or an appointing Judge by blood, marriage, adoption or related by a social tie that could be ~~reasonable~~ reasonably interpreted as a conflict of interest.
- (c) A guardian ad litem may be recognized as certified by the Court if he or she:
  - (1) has completed guardian ad litem training provided by the Court, another Indian tribe, or a state; or
  - (2) is recognized as a certified guardian ad litem by another jurisdiction.

708.8-3. *Responsibilities.* The guardian ad litem has none of the rights or duties of a general guardian. The guardian ad litem shall:

- (a) investigate and review all relevant information, records and documents, as well as interview the child, parent(s), social workers, teachers and all other relevant persons to gather facts when appropriate;
- (b) consider the importance of the child's culture, heritage and traditions;
- (c) consider, but shall not be bound by, the wishes of the child or the positions of others as to the best interests of the child;
- (d) explain the role of the guardian ad litem and the court proceedings to the child in language and terms appropriate to the child's age and maturity level;
- (e) provide a written or oral report to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based;
- (f) recommend evaluations, assessments, services and treatment of the child and the child's family when appropriate;
- (g) inform the court of any concerns or possible issues regard the child or the child's family;
- (h) represent the best interests of the child;
- (i) perform other duties as directed by the Court; and
- (j) comply with all laws, policies and rules of the Nation governing the conduct of a guardian ad litem.

708.8-4. *Compensation.* The guardian ad litem shall be compensated at a rate that the Court determines is reasonable. The Court shall compensate the guardian ad litem for his or her fees. The parties shall reimburse the Court for the guardian ad litem fees. The Court may apportion the amount of reimbursement each party shall pay based on the ability to pay or assess the cost equally between the parties. The Court may determine an appropriate time frame for the reimbursement to occur. The Court may waive the guardian ad litem expense if the cost of the guardian ad litem will impose an immediate and substantial hardship on the parties.

#### **708.9. Advocate**

708.9-1. The parent, guardian and legal custodian of a child has the right to obtain an advocate to represent and advise him or her throughout any proceeding under this law at his or her own expense.

#### **708.9-2. Qualifications.**

- (a) An advocate shall be an adult who:
  - (1) is at least twenty one (21) years of age;
  - (2) is admitted to practice before the Oneida Judiciary;
  - (2) has never been convicted of a felony unless the person received a pardon or forgiveness; and
  - (3) has never been convicted of any crime against a child.

708.9-3. An advocate shall comply with all laws, rules and policies of the Nation governing advocates.

#### **708.10 Cultural Wellness Facilitator and Healer**

708.10-1. The Department may utilize a Cultural Wellness Facilitator and Healer throughout all child welfare proceedings.

708.10-2. The Cultural Wellness Facilitator and Healer may provide:

- (a) wellness sessions utilizing culturally based and appropriate healing methods;
- (b) training on Oneida culture, language and traditions; and



(c) and any other service that may be necessary.

**708.1011. Order of Placement Preferences**

708.1011-1. The following order of placement preferences shall be followed when it is necessary to place a child outside of the home under this law:

- (a) A member of the child's immediate or extended family;
- (b) A family clan member;
- (c) A member of the Nation;
- (d) Descendants of the Nation;
- (e) A member of another federally recognized tribe;
- (f) Fictive kin within the Nation community;
- (g) Fictive kin outside the Nation community; or
- (h) Any other person or persons not listed above.

708.1011-2. The order of placement preferences listed in section 708.1011-1. are prioritized from the most preference given to a child placed in a home in accordance with section 708.1011-1(a) and the least amount of preference given to a child placed in a home in accordance with section 708.1011-1(h).

708.1011-3. In order to deviate from the placement preferences listed in section 708.1011-1, the Court shall consider the best interest of the child when determining whether there is good cause to go outside the placement preference.

(a) Good cause to go outside the placement preferences shall be determined based on any of the following:

- (1) When appropriate, the request from the child's parent or the child, when the child is age twelve (12) or older;
- (2) Any extraordinary physical, mental or emotional health needs of the child requiring highly specialized treatment services as established by an expert; or
- (3) The unavailability of a suitable placement after diligent efforts have been made to place the child in the placement preference listed in section 708.1011-1; or
- (4) Any other reason deemed by the Court to be in the best interest of the child.

(b) The party requesting to deviate from the placement preferences listed in 708.1011-1 has the burden of establishing good cause.

**708.1112. Notice of Petition**

708.1112-1. Petitions alleging that a child is in need of protection or services may be given to the parties directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.1112-2. Petitions for termination of parental rights, guardianship, and adoption shall be served on all other parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.~~11~~12-3. All parties shall be notified of all subsequent hearings under this law by first-class mail to the recently verified last-known address of the party with the purpose of providing the parties an opportunity to be heard.

**708.~~12~~13. Hearings (General)**

708.~~12~~13-1. If the Court finds that it is in the best interest of the child, the Court may exclude the child from participating in a hearing conducted in accordance with this law.

708.~~12~~13-2. The Oneida Judiciary Rules of Evidence are not binding at emergency custody hearings, dispositional hearings, or a hearing about changes in placement, revision of dispositional orders, extension of dispositional orders, or termination of guardianship orders. At those hearings, the Court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The Court shall give effect to the rules of privilege recognized by laws of the Nation. The Court shall apply the basic principles of relevancy, materiality, and probative value to proof of all questions of fact.

708.~~12~~13-3. If an alleged father appears at a hearing under this law, the Court may refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity. While paternity is being established, the Court shall enter an order finding good cause to suspend the time limits established under this law.

708.~~12~~13-4. At any time the Court or the Department may refer the matter to the Nation's Child Support Agency.

**708.~~13~~14. Discovery and Records**

708.~~13~~14-1. Upon written request, the parties and their counsel shall have the right to inspect, copy or photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child including reports of preliminary inquiries, predisposition studies and supervision records relating to the child which are in the possession of the Nation's Child Welfare attorney or the Department that pertain to any case under this law.

708.~~13~~14-2. If a request for discovery is refused, the person may submit an application to the Court requesting an order granting discovery. Motions for discovery shall certify that a request for discovery has been made and refused.

708.~~13~~14-3. If the discovery violates a privileged communication or a work product rule, the Court may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

708.~~13~~14-4. The identity of the individual that initiated the investigation by contacting the Department, shall be redacted in all documents that are made available to the parties.

708.~~13~~14-5. In addition to the discovery procedures permitted under this law, the discovery procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all proceedings under this law.

**708.~~14~~15. Taking a Child into Custody**

708.~~14~~15-1. *Grounds for Taking a Child into Custody.* A child may be taken into custody without a Court order by an Indian Child Welfare Worker or law enforcement officer if there are reasonable grounds to believe:

- (a) A warrant for the child's apprehension has been issued by the Court or another court of competent jurisdiction to take the child into custody;



(b) The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary; and/or

(c) The child has violated the conditions of an order issued pursuant to this law.

708.1415-2. The Court may enter an order directing that a child be taken into custody upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present custody.

708.1415-3. A person taking the child into custody, under this section, shall immediately attempt to notify the parent(s), guardian(s), and legal custodian(s) of the child by the most practical means. Attempts to satisfy notification shall continue until either the parent(s), guardian(s), and legal custodian(s) of the child is notified, or the child is delivered to an Indian Child Welfare Worker, whichever occurs first. If the child is delivered to the Indian Child Welfare Worker before the parent(s), guardian(s), and legal custodian(s) is notified, the Indian Child Welfare Worker, or another person at his or her direction, shall continue the attempt to notify until the parent(s), guardian(s), and legal custodian(s) of the child is notified.

708.1415-4. Once the child is taken into custody and turned over to the care of the Department, the Department shall make every effort to release the child immediately to the child's parent(s), guardian(s), and legal custodian(s), so long as it is in the child's best interest and the parent(s), guardian(s), and legal custodian(s) is willing to receive the child.

708.1415-5. *Probable Cause for Taking a Child into Custody.* A child may be held in custody if the Indian Child Welfare Worker determines the child is within the jurisdiction of the Court and probable cause exists to believe any of the following if the child is not held in custody:

(a) The child will cause injury to himself or herself or be subject to injury by others;

(b) The child will be subject to injury by others, based on a determination that if another child in the home is not held that child will be subject to injury by others;

(c) The parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care, and that services to ensure the child's safety and well-being are not available or would be inadequate;

(d) The child meets the criteria for probable cause for taking a child into custody specified in section 708.1415-5(c), based on a determination that another child in the home meets any of the criteria; or

(e) The child will run away or be taken away so as to be unavailable for proceedings of the Court.

708.1415-6. *Holding a Child in Custody.* A child held in custody may be held in any of the following places as long as the places are in the child's best interest and all people residing or regularly visiting the premises have cleared a background check:

(a) The home of a relative, except that a child may not be held in the home of a relative that has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child, or any crime against a child, and the conviction has not been pardoned, forgiven, reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination;

(b) A licensed foster home;

(c) A licensed group home;

(d) A non-secure facility operated by a licensed child welfare agency;

- (e) A licensed private or public shelter care facility; or
- (f) The home of a person not a relative, if the placement does not exceed thirty (30) days, though the placement may be extended for up to an additional thirty (30) days by the Indian Child Welfare Worker, and if the person has not had a child care license refused, revoked, or suspended within the last two (2) years.

708.1415-7. When holding a child in custody for emergency placement the use of the preferences for placement stated in section 708.10-1 are preferred, but not mandatory. If the preferences for placement are not followed, the Department shall try to transition that child into a home that fits the order of preferences for placement as quickly as deemed appropriate by the Department.

708.1415-8. If a child is held in custody, the Indian Child Welfare Worker shall notify the child's parent(s), guardian(s), and legal custodian(s) of the reasons for holding the child and of the child's whereabouts except when the Indian Child Welfare Worker believes that notice would present imminent danger to the child. If the parent, guardian, or legal custodian is not immediately available, the Indian Child Welfare Worker or another person designated by the worker shall provide notice as soon as possible.

708.1415-9. The Indian Child Welfare Worker shall also notify the parent, guardian, and legal custodian of the following:

- (a) the date, time and place of the emergency custody hearing;
- (b) the nature and possible outcomes of the hearing;
- (c) the right to present and cross-examine witnesses; and
- (d) the right to retain counsel at his or her own expense.

708.1415-10. When the child is age twelve (12) or older, the Indian Child Welfare Worker shall notify the child of the date, time, and place and the nature and possible outcomes of the emergency custody hearing.

#### **708.1516. Emergency Custody Hearing**

708.1516-1. If a child who has been taken into custody under section 708.1415-5 is not released, a hearing to determine whether the child shall continue to be held in custody under the criteria of probable cause for taking a child into custody under section 708.1415-5(a)-(e) shall be conducted by Court as soon as possible but no later than seventy-two (72) hours of the time the decision to hold the child was made, excluding Saturdays, Sundays, and holidays. By the time of the hearing, a petition for a child in need of protection or services under section 708.1617 shall be filed unless the Department seeks and receives an extension pursuant to section 708.1516-2. The child shall be released from custody if a hearing is not held within the specified timelines.

708.1516-2. If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the Court for an additional seventy-two (72) hours from the time of the hearing, excluding Saturdays, Sundays, and holidays, only if, as a result of the facts brought forth at the hearing, the Court determines that probable cause exists to believe any of the following:

- (a) That additional time is required to determine whether the filing of a petition initiating proceedings under this law is necessary;
- (b) That the child is an imminent danger to himself or herself or to others; or
- (c) The parent, guardian, and legal custodian of the child or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care.

- 606 | 708.~~45~~16-3. The Court may grant a one-time extension under section 708.~~45~~16-2 for a petition.  
 607 | In the event a petition is not filed within the extension period, the Court shall order the child's  
 608 | immediate release from custody.
- 609 | 708.~~45~~16-4. Prior to the start of the hearing, the Court shall provide a copy of the petition to the  
 610 | parent, guardian, and legal custodian if present, and to the child if he or she is twelve (12) years  
 611 | of age or older.
- 612 | 708.~~45~~16-5. Prior to the start of the hearing, the Court shall inform the parent, guardian, or legal  
 613 | custodian of the following:
- 614 | (a) allegations that have been made or may be made;
  - 615 | (b) the nature and possible outcomes of the hearing and possible future hearings;
  - 616 | (c) the right to present and cross-examine witnesses; and
  - 617 | (d) the right to retain counsel at his or her own expense.
- 618 | 708.~~45~~16-6. If present at the hearing, the Court may permit the parent to provide the names and  
 619 | other identifying information of three (3) relatives of the child or other individuals eighteen (18)  
 620 | years of age or older whose homes the parent wishes the Court to consider as placements for the  
 621 | child. If the parent does not provide this information at the hearing, the Department shall permit  
 622 | the parent to provide the information at a later date.
- 623 | 708.~~45~~16-7. All orders to hold a child in custody shall be in writing and shall include all of the  
 624 | following:
- 625 | (a) A finding that continued placement of the child in his or her home would be contrary
  - 626 | to the best interests of the child;
  - 627 | (b) A finding that the Department and/or anyone else providing services to the child had
  - 628 | reasonable grounds to remove the child from the home based on the child's best interest;
  - 629 | (c) A finding that the Department has made reasonable efforts to prevent the removal of
  - 630 | the child from the home, while assuring that the child's best interest are the paramount
  - 631 | concerns;
  - 632 | (d) The Department made reasonable efforts to make it possible for the child to return
  - 633 | safely home; and
  - 634 | (e) If the child has one (1) or more siblings, who have also been removed from the home,
  - 635 | a finding as to whether the Department has made reasonable efforts to place the child in a
  - 636 | placement that enables the sibling group to remain together, unless the Court determines
  - 637 | that a joint placement would be contrary to the safety or well-being of the child or any of
  - 638 | those siblings, in which case the Court shall order the Department make reasonable
  - 639 | efforts to provide for frequent visitation or other ongoing interaction between the child
  - 640 | and the siblings, unless the Court determines that such visitation or interaction would be
  - 641 | contrary to the safety or well-being of the child or any of those siblings.
- 642 | 708.~~45~~16-8. An order to hold a child in custody remains in effect until a dispositional order is  
 643 | granted, the petition is withdrawn or dismissed, or the order is modified or terminated by further  
 644 | order of the Court.
- 645 | 708.~~45~~16-9. An order to hold a child in custody may be re-heard upon motion of any party if, in  
 646 | the Court's discretion, good cause is found, whether or not counsel was present.
- 647 |
- 648 | **708.~~16~~17. Petition for a Child in Need of Protection or Services**
- 649 | 708.~~16~~17-1. The Nation's Child Welfare attorney or the Department shall initiate proceedings  
 650 | under this section by filing a petition with the Court, signed by a person who has knowledge of  
 651 | the facts alleged or is informed of them and believes them to be true.

708.1617-2. The petition shall include the following:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parent, guardian, legal custodian or spouse, if any; or if no such person can be identified, the name and address of the nearest relative;
- (c) Whether the child is in custody, and, if so, the place where the child is being held and the date and time he or she was taken into custody unless there is reasonable cause to believe that such disclosure would result in imminent danger to the child or legal custodian;
- (d) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit;
- (e) A plain and concise statement of facts upon which the allegations are based, including the dates, times, and location at which the alleged acts occurred. If the child is being held in custody outside his or her home, the statement shall include information showing that continued placement of the child in the home would be contrary to the welfare of the child and the efforts that were made to prevent the removal of the child, while assuring that the child's health, welfare, and safety are the paramount concerns; and
- (f) Any other information as deemed necessary by the Court.

708.1617-3. The petition shall state if any of the facts required for a petition are not known or cannot be ascertained by the petitioner.

708.1617-4. A petition may be amended at any time at the discretion of the Court. An amended petition may be given to the parties directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

### **708.18. Consent Decree**

708.18-1. *Consent Decree.* At any time after the filing of a petition pursuant to section 708.17 and before the entry of judgment, the Court may suspend the proceedings and place the child under supervision in the home or present placement of the child. The Court may establish terms and conditions applicable to the child and the child's parent, guardian or legal custodian. The order under this section shall be known as a consent decree and must be agreed to by the child who is twelve (12) years of age or older, the parent, guardian or legal custodian, and the person filing the petition. The consent decree shall be reduced to writing and given to the parties.

708.18-2. *Requirements of a Consent Decree.* If at the time the consent decree is entered into the child is placed outside the home and if the consent decree maintains the child in that placement, the consent decree shall include all of the following:

- (a) A finding that placement of the child in his or her home would be contrary to the welfare of the child;
- (b) A finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety and best interests are the paramount concerns;
- (c) If a permanency plan has previously been prepared for the child, a finding as to whether the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan; and
- (d) If the child has one or more siblings who have also been removed from the home, the consent decree shall include a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that the placement of the siblings together would be contrary to the safety, well-being and best interests of the child or any of those siblings, in which

case the Court shall order the department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety, well-being or best interests of the child or any of those siblings.

708.18-3. Time Limits of Consent Decree. A consent decree shall remain in effect up to six (6) months unless the child, parent, guardian, or legal custodian is discharged sooner by the Court. The time limits under this law shall be tolled during the pendency of the consent decree.

708.18-4. Extension of a Consent Decree. Upon the motion of the Court or the request of the child, parent, guardian, legal custodian, child's guardian ad litem, or the Department, the Court may, after giving notice to the parties to the consent decree extend the decree for up to an additional six (6) months in the absence of objection to extension by the parties to the initial consent decree. If the child, parent, guardian, legal custodian, child's guardian ad litem objects to the extension, the Court shall schedule a hearing and make a determination on the issue of extension.

708.18-5. If, prior to discharge by the Court, or the expiration of the consent decree, the Court finds after conducting a hearing that the child, parent, guardian, or legal custodian has failed to fulfill the express terms and conditions of the consent decree, the hearing under which the child was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

#### **708.1719. Plea Hearing for a Child in Need of Protection or Services**

708.1719-1. A plea hearing shall take place on a date which allows reasonable time for the parties to prepare but is within forty-five (45) days after the filing of a petition, unless the Court enters an order finding good cause to go outside of the time limits.

708.1719-2. If a petition is not contested, the Court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is within forty-five (45) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted a court report pursuant to section 708.1921, the Court may proceed immediately with the dispositional hearing.

708.1719-3. If the petition is contested, the Court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is within sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.1719-4. Before accepting an admission or plea of no contest of the alleged facts in a petition, the Court shall:

(a) Address the parties present and determine that the plea of no contest or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes;

(b) Establish whether any promises or threats were made to elicit the plea of no contest or admission; and

(c) Make inquiries that establish a factual basis for the plea of no contest or admission.

#### **708.1820. Fact finding Hearing for a Child in Need of Protection or Services**

708.1820-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that the child is in need of protection or services.



708.1820-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.1820-3. At the close of the fact-finding hearing, the Court shall set a date for the dispositional hearing which allows a reasonable time for the parties to prepare but is no more than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted court report pursuant to section 708.4921, the Court may proceed immediately with the dispositional hearing.

**708.1921. Department's Disposition Report for a Child in Need of Protection or Services**

708.1921-1. Before the dispositional hearing, the Department shall submit a written report to the Court, with a copy to the parties at least seven (7) days prior to the hearing, which shall contain all of the following:

- (a) The social history of the child and family;
- (b) A strategic plan for the care of and assistance to the child and family calculated to resolve the concerns presented in the petition;
- (c) A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child and family under the proposed plan; and
- (d) If an out-of-home placement is being recommended, specific reasons for recommending that placement.

708.1921-2. If the Department is recommending out-of-home placement, the written report shall include all of the following:

- (a) The location of the placement and where it fits within the placement preferences.
- (b) A recommendation as to whether the Court should establish a child support obligation for the parents;
- (c) Specific information showing that continued placement of the child in his or her home would be contrary to the best interests of the child and specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
- (d) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, specific information showing that Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the report shall include specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and
- (e) If a recommendation is made that the child and his or her siblings not be placed together specific information showing that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to best interests of the child or any of those siblings;

708.~~19~~21-3. The Department may request the Court to withhold identifying information from the child's parent, guardian or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else.

**708.~~20~~22. Dispositional Hearing for a Child in Need of Protection or Services**

708.~~20~~22-1. At a dispositional hearing, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.

708.~~20~~22-2. During a dispositional hearing, if the Department is recommending placement of the child outside of the child's home in accordance with the placement preferences in section

708.~~10~~11-1, the Department shall present as evidence specific information showing all of the following:

(a) That continued placement of the child in his or her home would be contrary to the best interests of the child;

(b) That the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;

(c) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, that the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the Department shall present as evidence specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and

(d) If a recommendation is made that the child and his or her siblings not be placed together, that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the Department shall present as evidence specific information showing that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.

708.~~20~~22-3. The Court's dispositional order shall employ those means necessary to maintain and protect the best interests of the child which are the least restrictive of the rights of the parent and child and which assure the care, treatment or rehabilitation of the child and the family consistent with the protection of the public. When appropriate, and, in cases of child abuse or neglect when it is consistent with the best interest of the child in terms of physical safety and physical health, the family unit shall be preserved and there shall be a policy of transferring custody of a child from the parent only when there is no less drastic alternative. If there is no less drastic alternative for a child than transferring custody from the parent, the Court shall consider transferring custody pursuant to the preferences for placement set forth in section 708.~~10~~11-1.

708.~~20~~22-4. *Dispositional Orders*. The Court's dispositional order shall be in writing and shall contain:

(a) The treatment plan and specific services to be provided to the child and family, and if custody of the child is to be transferred to effect the treatment plan, the identity of the legal custodian;

(b) If the child is placed outside the home, where the child will be placed. If the Court finds that disclosing identifying information related to placement of the child would result in imminent danger to the child or anyone else, the Court may order the name and address of whom the child is placed with withheld from the parent or guardian;

(c) The date of the expiration of the court's order;

(1) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child in his or her home shall terminate one (1) year after the date on which the order is granted unless the Court specifies a shorter period of time or the Court terminates the order sooner.

(2) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child outside of the home shall terminate on the latest of the following dates, unless the Court specifies a shorter period or the Court terminates the order sooner:

(A) The date on which the child attains eighteen (18) years of age;

(B) The date that is one (1) year after the date on which the order is granted; and

(C) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

~~(d) If the child is placed outside the home of his or her parent, guardian, or legal custodian, a designation of the amount of child support, if any, to be paid;~~

~~(e)~~(d) If the child is placed outside the home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child and a finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns. The Court shall make the findings specified in this subdivision on a case-by-case basis based on circumstances specific to the child;

~~(f)~~(e) If the child is placed outside the home under the supervision of the Department, an order ordering the child into the placement and care responsibility of the Department and assigning the Department primary responsibility for providing services to the child and family;

~~(g)~~(f) If the child is placed outside the home and if the child has one (1) or more siblings who have also been placed outside the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that placement of the children together would be contrary to the best interests of the child or any of those siblings, in which case the Court shall order the Department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the best interests of the child or any of those siblings;

~~(h)~~(g) A statement of the conditions with which the parties are required to comply; and

~~(i)~~(h) If the Court finds that it would be in the best interest of the child, the Court may set reasonable rules of parental visitation.



(1) If the Court denies a parent visitation, the Court shall enter conditions that shall be met by the parent in order for the parent to be granted visitation.

708.2022-5. *Treatment Plans and Conditions.* In a proceeding in which a child has been found to be in need of protection or services, the Court may order the child's parent, guardian and legal custodian to comply with any conditions and/or treatment plan determined by the Court to be necessary for the child's welfare.

(a) The treatment plan or conditions ordered by the Court shall contain the following information:

(1) The identification of the problems or conditions that resulted in the abuse or neglect of a child;

(2) The treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include, but is not limited to, the conditions or requirements that must be established for the safe return of the child to the family;

(3) The specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan, including the Department's specific responsibilities to make reasonable efforts to assist the parent, guardian or legal custodian in their efforts toward reunification with the child; and

(4) A notice that completion of a treatment plan does not guarantee the return of a child and that completion of a treatment plan without a change in behavior that caused removal in the first instance may result in the child remaining outside the home.

(b) A treatment plan may include recommendations and the dispositional order may require the child's parent, guardian and legal custodian to participate in:

(1) Outpatient mental health treatment;

(2) Substance abuse treatment;

(3) Anger management;

(4) Individual or family counseling;

(5) Parent training and education; ~~and/or~~

~~(6) Cultural wellness treatment and training; and/or~~

~~(67)~~ Any other treatment as deemed appropriate by the Court.

708.2022-6. If the Court finds that the parent was convicted of committing a crime against the life and bodily security of a child or a crime against a child, contained within Chapters 940 and 948 of the Wisconsin Statutes or another similar law in another jurisdiction, the Court may find that the Department is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

708.2022-7. The Court shall provide a copy of the dispositional order to the child's parent, guardian, and legal custodian, other parties to the action, and the child if the child is age twelve (12) or older.

708.2022-8. Whenever the Court orders a child to be placed outside his or her home or denies a parent visitation because the child is in need of protection or services, the Court shall orally inform the parent who appears in Court of any grounds for termination of parental rights which may be applicable and of the conditions necessary for the child to be returned to the home or for the parent to be granted visitation. The Court shall also include this information in the written dispositional order provided to the parent.

**708.2123. Permanency Plans**

708.2123-1. The Department shall prepare a written permanency plan anytime a child is placed outside the home pursuant to dispositional order that finds the child is in need of protection or services. The permanency plan shall include all of the following:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parent(s), guardian(s), and legal custodian(s);
- (c) The date on which the child was removed from the home;
- (d) A statement as to the availability of a safe and appropriate placement with an extended family member;
- (e) The goal(s) of the permanency plan which may include one or more of the following: reunification, adoption, guardianship, placement with a fit and willing relative, or long-term foster care;
- (f) Date by which it is likely the goal(s) of the permanency plan will likely be achieved;
- (g) A description of the services offered and any services provided in an effort to prevent removal of the child from the home or to return the child to the home, while assuring that the best interests of the child are the paramount concerns;
- (h) If the child has one (1) or more siblings who have been removed from the home, a description of the efforts made to place the child in a placement that enables the sibling group to remain together. If a decision is made to not place the siblings together, a description of the efforts made to provide for frequent and ongoing visitation or other ongoing interaction between the child and siblings;
- (i) Information about the child's education; and
- (j) Any other appropriate information as deemed necessary by the Court or the Department.

708.2123-2. The Department shall file the initial permanency plan with the Court within sixty (60) days after the date the child was first removed from the home unless the child is returned to the home within that time period.

708.2123-3. The Court shall hold a hearing to review the permanency plan no later than six (6) months after the date on which the child was first removed from the home and every six months thereafter for as long as the child is placed outside the home and ~~if~~is found to be in need of protection or services.

- (a) At least five (5) business days before the date of the hearing, the Department shall provide a copy of the updated permanency plan to the Court and the parties.
- (b) All parties, including foster parent(s) shall have a right to be heard at the permanency plan hearing. Any party may submit written comments to the Court no less than three (3) business days prior to the hearing date.

708.2123-4. After the hearing, the Court shall enter a written order addressing the following:

- (a) The continuing necessity for and the safety and appropriateness of the placement;
- (b) The compliance with the permanency plan by the Department and any other service providers, the child's parent(s), and the child;
- (c) Efforts taken to involve appropriate service providers and Department staff in meeting the special needs of the child and the child's parent(s);

(d) The progress toward eliminating the causes for the child's placement outside the home and returning the child safely to the home or obtaining a permanent placement for the child;

(e) The date by which it is likely that the child will be returned to the home or placed for adoption, with a guardian, with a fit and willing relative, or in some other permanent living arrangement;

(f) Whether reasonable efforts were made by the Department to achieve the permanency plan goal(s);

(g) Whether reasonable efforts were made by the Department to place the child in a placement that enables the sibling group to remain together or have frequent visitation or other ongoing interaction; and

(h) The date of the next review hearing, if appropriate.

#### **708.2224. Change in Placement**

708.2224-1. The Department, the Nation's Child Welfare attorney, or a party to the dispositional order may request a change in the placement of the child who is the subject of the dispositional order by filing a motion with the Court. The Court may also propose a change in placement on its own motion.

708.2224-2. The request for a change in placement shall contain the name and address of the new placement requested and shall state what new information is available that affects the advisability of the current placement.

708.2224-3. If the proposed change in placement moves the child outside of his or her home, the request shall contain specific information showing that continued placement of the child in the home would be contrary to the best interests of the child and if the Department is making the request, specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns.

~~708.22 4. The request for a change in placement shall be submitted to the Court. The Court may propose a change in placement on its own motion.~~

708.2224-5. Written notice of the proposed change in placement shall be sent to all of the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

(a) The Department shall schedule a hearing prior to placing the child outside of the home, unless emergency conditions that necessitate an immediate change in the placement of a child apply.

(b) A hearing is not required when the child currently placed outside the home transfers to another out-of-home placement.

(1) A party may request a hearing when the child is transferred to a different out-of-home placement by submitting a written request to the Court within ten (10) days of being served with the notice of the proposed change.

708.2224-6. If a hearing is held, any party may present evidence relevant to the issue of the change in placement. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of change in placement.

708.2224-7. *Emergency Change in Placement.* If emergency conditions necessitate an immediate change in the placement of a child, the Department may remove the child to a new

placement, whether or not authorized by the existing dispositional order. Notice of the emergency change in placement shall be sent to the parties as soon as possible but no later than seventy-two (72) hours after the emergency change in placement excluding Saturdays, Sundays, and holidays. If the emergency conditions necessitate an immediate change in placement of a child placed in the home to a placement outside the home, the Department shall schedule the matter for a hearing as soon as possible but no later than seventy-two (72) hours after the emergency change in placement is made, excluding Saturdays, Sundays, and holidays.

708.2224-8. The parties may agree to a change in placement by signing a stipulation and filing it with the Court for approval.

708.2224-9. No change in placement may extend the expiration date of the original dispositional order, except that if the change in placement is from a placement in the child's home to a placement outside the home the Court may extend the expiration date of the original dispositional order to the latest of the following dates, unless the Court specifies a shorter period:

(a) The date on which the child reaches eighteen (18) years of age;

(b) The date that is one (1) year after the date on which the change-in-placement order is granted; or

(c) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

708.2224-10. If the change in placement is from a placement outside the home to a placement in the child's home and if the expiration date of the original dispositional order is more than one (1) year after the date on which the change-in-placement order is granted, the Court shall shorten the expiration date of the original dispositional order to the date that is one (1) year after the date on which the change-in-placement order is granted or to an earlier date as specified by the Court.

### **708.2325. Trial Reunification**

708.2325-1. The Department or the Nation's Child Welfare attorney may request the Court to order a trial reunification. A trial reunification occurs when a child placed in an out-of-home placement resides in the home of a parent, guardian, or legal custodian from which the child was removed for a period of seven (7) consecutive days or longer, but not exceeding one hundred fifty (150) days, for the purpose of determining the appropriateness of changing the placement of the child to that home. A trial reunification is not a change in placement under section 708.2224.

708.2325-2. *Request for Trial Reunification.* The Department or the Nation's Child Welfare attorney shall include the following in the request for a trial reunification:

(a) The name and address of the requested trial reunification home;

(b) A statement describing why the trial reunification is in the best interests of the child; and

(c) A statement describing how the trial reunification satisfies the objective of the child's permanency plan.

708.2325-3. *Emergency Removal of a Child.* A request for a trial reunification may not be made on the sole grounds that an emergency condition necessitates an immediate removal of the child from the child's out-of-home placement. If an emergency condition necessitates such an immediate removal, the Department shall proceed with an emergency change in placement as described in section 708.2224-7.

1061 | 708.2325-4. *Notice.* The Department or Nation's Child Welfare attorney shall submit the  
1062 request to the Court and shall provide the parent, guardian, legal custodian and any other party  
1063 written notice pursuant to the Oneida Judiciary Rules of Civil Procedure. The notice shall  
1064 contain the information that is required to be included in the request under section 708.2325-2.

1065 | 708.2325-5. *Trial Reunification Hearing.* Any party who is entitled to receive notice of a  
1066 requested trial reunification may obtain a hearing on the matter by filing an objection with the  
1067 Court within ten (10) days after the trial reunification request was filed with the Court.

1068 (a) If no objection against the trial reunification is filed, the Court may issue an order for  
1069 the trial reunification.

1070 (b) If an objection is filed, a hearing shall be held within forty five (45) days after the  
1071 request was filed with the Court. A trial reunification shall not occur until after the  
1072 hearing. Not less than three (3) business days before the hearing the Department or the  
1073 Court shall provide notice of the hearing to all parties with a request for the trial  
1074 reunification attached to the notice.

1075 (1) If a hearing is held and the trial reunification would remove a child from a  
1076 foster home or other placement with a legal custodian, the Court shall give the  
1077 foster parent or other legal custodian a right to be heard at the hearing by  
1078 permitting the foster parent or legal custodian to make a written or oral statement  
1079 relating to the child and the requested trial reunification.

1080 (2) The Court may appoint a guardian ad litem for the child during the trial  
1081 reunification hearing.

1082 | 708.2325-6. *Order.* If the Court finds that the trial reunification is in the best interest of the  
1083 child and that the trial reunification satisfies the objectives of the child's permanency plan, the  
1084 Court shall order the trial reunification. The trial reunification shall terminate ninety (90) days  
1085 after the date of the order, unless the Court specifies a shorter period in the order, extends or  
1086 revokes the trial reunification. No trial reunification order may extend the expiration date of the  
1087 original dispositional order or any extension of the dispositional order.

1088 | 708.253-87. *Extension of Trial Reunification.* The Department may request an extension of a  
1089 trial reunification.

1090 (a) *Extension Request.* The request shall contain a statement describing how the trial  
1091 reunification continues to be in the best interests of the child. No later than ten (10) days  
1092 prior to the expiration of the trial reunification, the Department shall submit the request to  
1093 the Court and shall cause notice of the request to be provided to all parties.

1094 (b) *Extension Hearing.* Any party may obtain a hearing on the requested extension by  
1095 filing an objection with the Court within ten (10) days after the extension request was  
1096 filed with the Court.

1097 (1) If no objection is filed, the Court may order an extension of the trial  
1098 reunification.

1099 (2) If an objection is filed, the Court shall schedule a hearing on the matter. If the  
1100 Court is unable to conduct a hearing on the matter before the trial reunification  
1101 expires, the trial reunification shall remain in effect until the Court is able hold the  
1102 hearing. Not less than three (3) business days before the hearing the Department  
1103 or the Court shall provide notice of the hearing to all parties with a copy of the  
1104 extension request attached.

1105 (c) *Extension Order.* If the Court finds that the trial reunification continues to be in the  
1106 best interests of the child, the Court shall grant an order extending the trial reunification



for a period specified by the Court. Any number of extensions may be granted, but the total period for a trial reunification may not exceed one hundred and fifty (150) days.

708.~~23~~25-8. *End of Trial Reunification Period.* When a trial reunification period ends, the Department shall do one (1) of the following:

(a) Return the child to his or her out-of-home placement. The Department may do so without further order of the Court, but within five (5) days after the return of the child to his out-of-home placement the Department shall provide notice of the following:

- (1) the date of the return of the child to the out-of-home placement; and
- (2) the address of that placement to all parties, unless providing the address would present imminent danger to the child;

(b) Request a change in placement under section 708.~~22~~24 to place the child in a new out-of-home placement; or

(c) Request a change in placement under section 708.~~22~~24 to place the child in the trial reunification home.

708.~~23~~25-9. *Revocation of Trial Reunification.* The Department may determine that a trial reunification is no longer in the best interests of the child and revoke the trial reunification before the specified trial reunification period ends.

(a) *Revocation Request.* If the Department determines that the trial reunification is no longer in the best interests of the child, the Department, without prior order by the Court, may remove the child from the trial reunification home and place the child in the child's previous out-of-home placement or place the child in a new out-of-home placement.

(1) If the Department places the child in the child's previous out-of-home placement, within three (3) business days of removing the child from the trial reunification home, the Department shall submit a request for revocation of the trial reunification to the Court and shall provide notice of the request to all parties. The request shall contain the following information:

- (A) the date on which the child was removed from the trial reunification home;
- (B) the address of the child's current placement, unless providing the address would present imminent danger to the child; and
- (C) the reasons for the proposed revocation.

(2) If the Department places the child in a new out-of-home placement, within three (3) business days of removing the child from the trial reunification home, the Department shall request a change in placement under section 708.22. The procedures specified in section 708.~~22~~24 apply to a change in placement requested under this subdivision, except that the request shall include the date on which the child was removed from the trial reunification home in addition to the information required in 708.22-2. The trial reunification is revoked when the change in placement order is granted.

(b) *Revocation Hearing.* Any party may obtain a hearing on the matter by filing an objection with the Court within ten (10) days after the request was filed with the Court.

- (1) If no objection is filed, the Court may issue a revocation order.
- (2) If an objection is filed, the Court shall schedule a hearing on the matter. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing together with a copy of the request for the revocation, to all parties.

(c) *Revocation Order.* If the Court finds that the trial reunification is no longer in the best interests of the child who has been placed in his or her previous out-of-home placement, the Court shall grant an order revoking the trial reunification.

708.~~23~~25-10. *Prohibited Trial Reunifications.* The Court may not order a trial reunification in the home of an adult who has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child or any crime against a child, if the conviction has not been reversed, set aside, vacated or pardoned. If a parent in whose home a child is placed for a trial reunification is convicted of homicide or a crime against a child, and the conviction has not been reversed, set aside, vacated or pardoned, the Court shall revoke the trial reunification and the child shall be returned to his or her previous out-of-home placement, or placed in a new out-of-home placement.

(a) *Exception.* A prohibition against trial reunifications based on homicide of a parent or a crime against a child does not apply if the Court determines by clear and convincing evidence that the placement would be in the best interests of the child.

#### **708.~~24~~26. Revision of Dispositional Orders**

708.~~24~~26-1. A party, or the Court on its own motion, may request a revision in the dispositional order that does not involve a change in placement.

708.~~24~~26-2. The request or Court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the Court's disposition. The request for revision shall be filed with the Court with notice provided by the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.~~24~~26-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or Court proposal indicates that new information is available that affects the advisability of the Court's dispositional order, unless the parties file a signed stipulation and the Court approves.

708.~~24~~26-4. If a hearing is held, any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision.

#### **708.~~25~~27. Extension of Dispositional Orders**

708.~~25~~27-1. A party, or the Court on its own motion, may request an extension of a dispositional order. The request shall be filed with the Court with notice to the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.~~25~~27-2. No order may be extended without a hearing, unless the parties file a signed stipulation and the Court approves.

708.~~25~~27-3. Any party may present evidence relevant to the issue of extension. If the child is placed outside of his or her home, the Department shall present as evidence specific information showing that the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of extension.

708.~~25~~~~27~~-4. The Court shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the Department to achieve the permanency goal of the child's permanency plan.

708.~~25~~~~27~~-5. If a request to extend a dispositional order is made prior to the termination of the order, but the Court is unable to conduct a hearing on the request prior to the termination date, the order shall remain in effect until such time as an extension hearing is conducted.

**708.~~26~~~~28~~. Continuation of Dispositional Orders**

708.~~26~~~~28~~-1. If a petition for termination of parental rights or guardianship is filed or an appeal from a termination of parental rights or guardianship judgment is filed during the year in which a child in need of protection or services dispositional order is in effect, the dispositional order shall remain in effect until all proceedings related to the petition or appeal are concluded.

**708.~~27~~~~29~~. Guardianship for Certain Children in Need of Protection or Services**

708.~~27~~~~29~~-1. *Conditions for Guardianship.* The Court may appoint a guardian for a child if the Court finds all of the following:

(a) That the child has been found to be in need of protection or services under this law and has been placed outside of his or her home pursuant to one (1) or more Court orders, or that the child has been found to be in need of protection or services and placement of the child in the home of a guardian under this section has been recommended by the Department at the dispositional hearing;

(b) That the person nominated as the guardian of the child is a person with whom the child has been placed or in whose home placement of the child is recommended by the Department and that it is likely that the child will continue to be placed with that person for an extended period of time or until the child attains the age of eighteen (18) years;

(c) That, if appointed, it is likely that the person would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of eighteen (18) years;

(d) That it is not in the best interests of the child that a petition to terminate parental rights be filed with respect to the child;

(e) That the child's parents are neglecting, refusing or unable to carry out the duties of a guardian; and

(f) That the Department has made reasonable efforts to make it possible for the child to return to his or her home, while assuring that the child's best interests are the paramount concerns, but that reunification of the child with the child's parent(s) is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child or that the Department has made reasonable efforts to prevent the removal of the child from his or her home, while assuring the child's best interests, but that continued placement of the child in the home would be contrary to the best interests of the child.

708.~~27~~~~29~~-2. *Who May File a Petition for Guardianship.* Any of the following persons may file a petition for the appointment of a guardian for a child under this section:

(a) The child;

(b) The child's guardian ad litem;

(c) The child's parent;



(d) The person with whom the child is placed or in whose home placement of the child is recommended by the Department;

(e) The Department; or

(f) The Nation's Child Welfare attorney.

708.27-29-3. Petition for Guardianship. A proceeding for the appointment of a guardian for a child shall be initiated by a petition which shall include the following:

(a) The name, birth date, address, and tribal affiliation of the child;

(b) The names, birth dates, addresses, and tribal affiliation of the child's parents;

(c) A copy of the order adjudicating the child to be in need of protection or services and the order placing the child outside of the parental home; and

(d) A statement of the facts and circumstances which the petitioner alleges establish that the conditions for guardianship specified in section 708.27-1(a)-(f) are met.

708.29-4. Presence of the Proposed Guardian. The proposed guardian shall be present at all guardianship hearings. The Court may waive the appearance requirement for the proposed guardian if the Court determines there is good cause.

708.27-29-45. Plea Hearing for Guardianship. A plea hearing to determine whether any party wishes to contest a petition for guardianship shall take place no sooner than ten (10) days after the filing of the petition. At the hearing, the non-petitioning parties shall state whether they wish to contest the petition. Before accepting an admission or a plea of no contest to the allegations in the petition, the Court shall do all of the following:

(a) Address the parties present and determine that the admission or plea of no contest is made voluntarily and with understanding of the nature of the facts alleged in the petition, the nature of the potential outcomes and possible dispositions by the Court and the nature of the legal consequences of that disposition;

(b) Establish whether any promises or threats were made to elicit the admission or plea of no contest; and

(c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis for the admission or plea of no contest.

708.27-29-56. If the petition is not contested and if the Court accepts the admission or plea of no contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is requested.

708.27-29-67. If the petition is contested or if the Court does not accept the admission or plea of no contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

(a) If the petition is contested, the Court shall order the Department to file with the Court a report containing as much information relating to the appointment of a guardian as is reasonably ascertainable, including an assessment of the conditions for guardianship specified in section 708.27-29-1(a)-(f). The Department shall file its report with the Court prior to the fact-finding hearing and shall provide the parties with a copy of the report at least three (3) business days prior to the hearing.

708.27-29-78. Fact Finding Hearing for Guardianship. The Court shall hold a fact-finding hearing on the petition at which any party may present evidence relevant to the issue of whether the conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding hearing, finds by clear and convincing evidence that the conditions for guardianship specified in

1287 | section 708.~~27~~~~29~~-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional  
 1288 | hearing unless an adjournment is requested.

1289 | 708.~~27~~~~29~~-~~89~~. *Dispositional Hearing for Guardianship.* The Court shall hold a dispositional  
 1290 | hearing at which any party may present evidence, including expert testimony, relevant to the  
 1291 | disposition. In determining the appropriate disposition for guardianship, the Court shall use the  
 1292 | best interests of the child as the prevailing factor to be considered by the Court. In making a  
 1293 | decision about the appropriate disposition, the Court shall consider any report submitted by the  
 1294 | Department and shall consider, but not be limited to, all of the following:

- 1295 | (a) Whether the person would be a suitable guardian of the child;
- 1296 | (b) The willingness and ability of the person to serve as the child's guardian for an  
 1297 | extended period of time or until the child reaches the age of eighteen (18) years; and
- 1298 | (c) The wishes of the child.

1299 | 708.~~27~~~~29~~-~~9~~~~10~~. *Disposition Order for Guardianship.* After receiving any evidence relating to the  
 1300 | disposition, the Court shall enter one of the following dispositions and issue a written decision  
 1301 | consistent the Oneida Judiciary Rules of Civil Procedure:

- 1302 | (a) A disposition dismissing the petition if the Court determines that appointment of the  
 1303 | person as the child's guardian is not in the best interests of the child; or
- 1304 | (b) A disposition ordering that the proposed guardian be appointed as the child's guardian  
 1305 | if the Court determines that such an appointment is in the best interests of the child.

1306 | 708.~~26~~~~29~~-~~10~~~~11~~. If the Court appoints a guardian for the child, the Court may dismiss the  
 1307 | dispositional order finding that the child is in need of protection or services.

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### 1309 | **708.~~28~~~~30~~. Revisions of Guardianship Order**

1310 | 708.~~28~~~~30~~-1. Any person authorized to file a guardianship petition or the Court, on its own  
 1311 | motion may request a revision in a guardianship order.

1312 | 708.~~28~~~~30~~-2. The motion or Court proposal shall set forth in detail the nature of the proposed  
 1313 | revision, shall allege facts sufficient to show that there has been a substantial change in  
 1314 | circumstances since the last order affecting the guardianship was entered and that the proposed  
 1315 | revision would be in the best interests of the child and shall allege any other information that  
 1316 | affects the advisability of the Court's disposition. The motion for the revision shall be filed with  
 1317 | the Court with notice provided by the parties pursuant to the Oneida Judiciary Rules of Civil  
 1318 | Procedure.

- 1319 | (a) The Court may order the Department to file with the Court a report containing as  
 1320 | much information relating to the revision of the guardianship as is reasonably  
 1321 | ascertainable. The Department shall file its report with the Court prior to the hearing on  
 1322 | the revision of guardianship and shall provide the parties with a copy of the report at least  
 1323 | three (3) business days prior to the hearing.

1324 | 708.~~28~~~~30~~-3. The Court shall hold a hearing on the matter prior to any revision of the  
 1325 | guardianship order if the motion or Court proposal indicates that new information is available  
 1326 | which affects the advisability of the Court's guardianship order, unless the parties file a signed  
 1327 | stipulation and the Court approves.

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### 1329 | **708.~~29~~~~31~~. Termination of Guardianship**

1330 | 708.~~28~~~~31~~-1. A guardianship under this law shall continue until any of the following are met,  
 1331 | whichever occurs earlier:

- 1332 | (a) The date on which the child attains eighteen (18) years of age;

(b) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age; or

(c) The date on which the Court terminates the guardianship order.

708.~~29~~31-2. A parent of the child may request that a guardianship order be terminated. The request shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is willing and able to carry out the duties of a guardian and that the proposed termination of guardianship would be in the best interests of the child. The Court shall hold a hearing on the matter unless the parties file a signed stipulation and the Court approves.

(a) The Court may order the Department to file with the Court a report containing as much information relating to the termination of the guardianship as is reasonably ascertainable, including a re-assessment of the conditions for guardianship specified in section 708.~~27~~29-1(a)-(f). The Department shall file its report with the Court prior to the hearing on the termination of guardianship and shall provide the parties with a copy of the report at least three (3) business days prior to the hearing.

708.~~29~~31-3. Any person authorized to file a petition under for guardianship may request that a appointed guardian be removed for cause or the Court may, on its own motion, propose such a removal. The request or Court proposal shall allege facts sufficient to show that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian's trust and may allege facts relating to any other information that affects the advisability of the Court's disposition. The Court shall hold a hearing on the matter.

708.~~29~~31-4. A guardian appointed under this law may resign at any time if the resignation is accepted by the Court.

#### **708.~~30~~32. Termination of Parental Rights**

708.~~30~~32-1. It is the philosophy of the Nation that a united and complete family unit is of the utmost value to the community and the individual family members, and that the parent-child relationship is of such vital importance that it should be terminated only as a last resort when all efforts have failed to avoid termination and it is in the best interests of the child concerned to proceed with termination of parental rights.

708.~~30~~32-2. The Court may terminate a parent's rights on a voluntary or involuntary basis.

708.~~30~~32-3. An order terminating parental rights permanently severs all legal rights and duties between the parent whose parental rights are terminated and the child.

(a) An order terminating parental rights does not affect a child's relationship with the child's extended biological family unless the Court expressly finds that it is in the child's best interest to terminate the child's relationship with his or her extended biological family.

708.~~30~~~~32~~-4. The termination of parental rights shall not adversely affect the child's rights and privileges as a member of the Nation, nor as a member of any tribe to which the child is entitled to membership, nor shall it affect the child's enrollment status with the Nation, nor shall it interfere with the child's cultural level and traditional and spiritual growth as a member of the Nation.

**708.~~31~~~~33~~. Voluntary Termination of Parental Rights**

708.~~31~~~~33~~-1. The Court may terminate the parental rights of a parent after the parent has given his or her consent. When such voluntary consent is given and the Department has submitted a court report pursuant to section 708.~~36~~~~38~~, the Court may proceed immediately to a dispositional hearing.

708.~~31~~~~33~~-2. The Court may accept a voluntary consent to termination of parental rights only if the parent appears personally at the hearing and gives his or her consent to the termination of his or her parental rights. The Court may accept the consent only after the judge has explained the effect of termination of parental rights and has questioned the parent, and/or has permitted counsel who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary. If the Court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the Court may allow the parent to appear by telephone or live audiovisual means.

708.~~31~~~~33~~-3. If in any proceeding to terminate parental rights voluntarily any party has reason to doubt the capacity of a parent to give informed and voluntary consent to the termination, he or she shall so inform the Court. The Court shall then inquire into the capacity of that parent in any appropriate way and shall make a finding as to whether or not the parent is capable of giving informed and voluntary consent to the termination. If in the Court's discretion a person is found incapable of knowingly and voluntarily consenting to the termination of their parental rights, the Court shall dismiss the voluntary proceedings without prejudice. That dismissal shall not preclude an involuntary termination of the parent's rights.

708.~~31~~~~33~~-4. A parent who has executed a consent under this section may withdraw the consent for any reason at any time prior to the entry of a final order terminating parental rights.

708.~~31~~~~33~~-5. Any consent given under this section prior to or within ten (10) days after the birth of the child is not valid.

708.~~31~~~~33~~-6. The parties may agree to attend peacemaking to establish an agreement regarding post-voluntary termination of parental rights contact with a birth parent, birth sibling, or other birth relative of the child.

(a) Any party to a post-voluntary termination contact agreement may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

(b) After receiving a petition for action regarding a post-voluntary termination contact agreement the Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

(c) If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

(d) The Court may not revoke a termination of parental rights order or an order of adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a post-voluntary termination contact agreement; however, the parties may return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

### **708.3234. Grounds for Involuntary Termination of Parental Rights**

708.3234-1. Grounds for termination of parental rights shall be any of the following:

(a) *Abandonment.* Abandonment occurs when a parent either deserts a child without any regard for the child's physical health, safety or welfare and with the intention of wholly abandoning the child, or in some instances, fails to provide necessary care for their child.

(1) Abandonment shall be established by proving any of the following:

(A) That the child has been left without provision for the child's care or support, the petitioner has investigated the circumstances surrounding the matter and for sixty (60) consecutive days the petitioner has been unable to find either parent;

(B) That the child has been left by the parent without provision for the child's care or support in a place or manner that exposes the child to substantial risk of great bodily harm or death;

(C) That a court of competent jurisdiction has found any of the following:

(i) That a child has been abandoned under Wis. Stat. 48.13 (2) or under a law of any other state or a federal law that is comparable to the state law;

(ii) That the child was abandoned when the child was under one (1) year of age or has found that the parent abandoned the child when the child was under one (1) year of age in violation of Wis. Stat. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of abandonment of a child under Wis. Stat. 948.20 if committed in this state;

(D) That the child has been placed, or continued in a placement, outside the parent's home by a Court order containing the required notice and the parent has failed to visit or communicate with the child for a period of three (3) months or longer; or

(E) The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of six (6) consecutive months or longer.

(2) Incidental contact between parent and child shall not preclude the Court from finding that the parent has failed to visit or communicate with the child. The time



periods under sections 708.3234-1(a)(1)(D) and 708.3234-1(a)(1)(E) shall not include any periods during which the parent has been prohibited by Court order from visiting or communicating with the child.

(3) Abandonment is not established under sections 708.3234-1(a)(1)(D) and 708.3234-1(a)(1)(E) if the parent proves all of the following by clear and convincing evidence:

(A) That the parent had good cause for having failed to visit with the child throughout the three (3) or six (6) month time period alleged in the petition.

(B) That the parent had good cause for having failed to communicate with the child throughout the three (3) or six (6) month time period alleged in the petition.

(C) If the parent proves good cause under section 708.3234-1(a)(3)(B), including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one (1) of the following occurred:

(i) The parent communicated about the child with the person or persons who had physical custody of the child during the three (3) or six (6) month time period alleged in the petition, whichever is applicable, or, with the Department during the three (3) month time period alleged in the petition.

(ii) The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the Department throughout the three (3) or six (6) month time period alleged in the petition.

(b) *Relinquishment*. Relinquishment occurs when a parent gives up or abandons their child and all rights to their child. Relinquishment shall be established by proving that a court of competent jurisdiction has found that the parent has relinquished custody of the child when the child was seventy-two (72) hours old or younger.

(c) *Continuing Need of Protection or Services*. Continuing need of protection or services shall be established by proving any of the following:

(1) That the child has been found to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one (1) or more dispositional orders containing the notice required by section 708.2022-7;

(2) That the Department has made a reasonable effort to provide the services ordered by the Court;

(3) That the child has been outside the home for a cumulative total period of six (6) months or longer pursuant to such orders; and that the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the nine (9) month period following the termination of parental rights fact-finding hearing.

(d) *Continuing Parental Disability*. Continuing parental disability shall be established by proving that:

(1) The parent is presently, and for a cumulative total period of at least two (2) years within the five (5) years immediately prior to the filing of the petition has

1511 been, an inpatient at one (1) or more hospitals as defined in either the Nation's  
1512 laws or state law;

1513 (2) The condition of the parent is likely to continue indefinitely; and

1514 (3) The child is not being provided with adequate care by a relative who has legal  
1515 custody of the child, or by a parent or a guardian.

1516 (e) *Continuing Denial of Periods of Physical Placement or Visitation.* Continuing denial  
1517 of periods of physical placement or visitation shall be established by proving all of the  
1518 following:

1519 (1) The parent has been denied periods of physical placement by Court order in  
1520 an action affecting the family or has been denied visitation under a dispositional  
1521 order containing the notice required by section 708.20-7, Wis. Stat. 48.356 (2), or  
1522 Wis. Stat. 938.356 (2); and

1523 (2) A Court order has denied the parent periods of physical placement or  
1524 visitation for at least one (1) year.

1525 (f) *Child Abuse.* Child abuse shall be established by proving that the parent has  
1526 committed child abuse against the child who is the subject of the petition and proving  
1527 either of the following:

1528 (1) That the parent has caused death or injury to a child resulting in a felony  
1529 conviction; or

1530 (2) That a child has previously been removed from the parent's home pursuant to  
1531 a dispositional order after an adjudication that the child is in need of protection or  
1532 services.

1533 (g) *Failure to Assume Parental Responsibility.* Failure to assume parental responsibility  
1534 shall be established by proving that the parent or the person(s) who may be the parent of  
1535 the child have not had a substantial parental relationship with the child.

1536 (1) In evaluating whether the person has had a substantial parental relationship  
1537 with the child, the Court may consider such factors, including, but not limited to,  
1538 the following:

1539 (A) Whether the person has expressed concern for or interest in the support,  
1540 care or well-being of the child;

1541 (B) Whether the person has neglected or refused to provide care or support  
1542 for the child; and

1543 (C) Whether, with respect to a person who is or may be the father of the  
1544 child, the person has expressed concern for or interest in the support, care or  
1545 well-being of the mother during her pregnancy.

1546 (h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that  
1547 the person whose parental rights are sought to be terminated is also related, either by  
1548 blood or adoption, to the child's other parent in a degree of kinship closer than 2nd  
1549 cousin.

1550 (i) *Homicide or Solicitation to Commit Homicide of a Parent.* Homicide or solicitation  
1551 to commit homicide of a parent, which shall be established by proving that a parent of the  
1552 child has been a victim of first-degree intentional homicide, first-degree reckless  
1553 homicide or 2nd-degree intentional homicide or a crime under federal law or the law of  
1554 any other state that is comparable to any of those crimes, or has been the intended victim  
1555 of a solicitation to commit first-degree intentional homicide or a crime under federal law  
1556 or the law of any other state that is comparable to that crime, and that the person whose

parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime as evidenced by a final judgment of conviction.

(j) *Parenthood as a Result of Sexual Assault.*

(1) Parenthood as a result of sexual assault shall be established by proving that the child was conceived as a result of one of the following:

(A) First degree sexual assault [under Wis. Stats. 940.225(1)];

(B) Second degree sexual assault [under Wis. Stat. 940.225 (2)];

(C) Third degree sexual assault [under Wis. Stat. 940.225(3)];

(D) First degree sexual assault of a child [under Wis. Stat. 948.02(1)];

(E) Second degree sexual assault of a child [under Wis. Stat. 948.02 (2)];

(F) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025]; or

(G) Sexual assault of a child placed in substitute care [under Wis. Stat. 948.085].

(2) Conception as a result of sexual assault may be proved by a final judgment of conviction or other evidence produced at a termination of parental rights fact-finding hearing indicating that the person who may be the parent of the child committed, during a possible time of conception, a sexual assault as specified in this section against the other parent of the child.

(3) If the conviction or other evidence indicates that the child was conceived as a result of a sexual assault in violation of Wis. Stat. 948.02 (1) or (2) or 948.085, the parent of the child may be heard on his or her desire for the termination of the other parent's parental rights.

(k) *Commission of a Felony Against a Child.*

(1) Commission of a serious felony against the child, shall be established by proving that the child was the victim of a serious felony and parent was convicted of that serious felony.

(2) Commission of a violation of trafficking of a child under Wis. Stat. 948.051 involving any child or a violation of the law of any other state or federal law, if that violation would be a violation of Wis. Stat. 948.051 involving any child if committed in this state.

(3) In this subsection, "serious felony" means any of the following:

(A) The commission of, the aiding or abetting of, or the solicitation, conspiracy or attempt to commit, a violation of any of the following:

(i) First degree intentional homicide [under Wis. Stat. 940.01];

(ii) First degree reckless homicide [under Wis. Stat. 940.02];

(iii) Felony murder [under Wis. Stat. 940.03];

(iv) Second-degree intentional homicide [under Wis. Stat. 940.05]; or

(v) A violation of the law of any other state or federal law, if that violation would be a violation of the above mentioned felonies if committed in Wisconsin.

(B) The commission of a violation of any of the following:

(i) Battery, substantial battery, aggravated battery [under Wis. Stat. 940.19 (3), 1708 stats., or Wis. Stats. 940.19 (2), (4) or (5)];

(ii) Sexual assault [under Wis. Stat. 940.225 (1) or (2)];

(iii) Sexual assault of a child [under Wis. Stat. 948.02 (1) or (2)];



- (iv) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025];
- (v) Physical abuse of a child [under Wis. Stats. 948.03 (2) (a), (3) (a), or (5) (a) 1., 2., or 3.];
- (vi) Sexual exploration of a child [under Wis. Stat. 948.05];
- (vii) Trafficking of a child [under Wis. Stat. 948.051];
- (viii) Incest with a child [under Wis. Stat. 948.06];
- (ix) Soliciting a child for prostitution [under Wis. Stat. 948.08];
- (x), Human trafficking [under Wis. Stat. 940.302 (2) if Wis. Stat. 940.302 (2) (a) 1. b. applies]; or
- (xi) A violation of the law of any other state or federal law, if that violation would be a violation listed under the above listed felonies if committed in Wisconsin.

(C) The commission of a violation of neglecting a child under Wis. Stat. 948.21 or a violation of the law of any other state or federal law, if that violation would be a violation of Wis. Stat. 948.21 if committed in this state, that resulted in the death of the victim.

(1) *Prior Involuntary Termination of Parental Rights of Another Child.* Prior involuntary termination of parental rights to another child shall be established by proving all of the following:

- (1) That the child who is the subject of the petition is in need of protection or services under section 708.5-2(b), (d), or (k); or that the child who is the subject of the petition was born after the filing of a petition under this subsection whose subject is a sibling of the child; and
- (2) That, within three (3) years prior to the date the Court determined the child to be in need of protection or services as specified in section 708.3234-1 (l) (1) or, in the case of a child born after the filing of a petition as specified in section 708.3234-1 (l) (1), within three (3) years prior to the date of birth of the child, a Court has ordered the termination of parental rights with respect to another child of the person whose parental rights are sought to be terminated on one or more of the grounds specified in this section.

#### **708.3335. Petition for Termination of Parental Rights**

708.3335-1. *Who May File a Petition for Termination of Parental Rights.* A petition for termination of parental rights shall be filed by the Nation's Child Welfare attorney, the Department, or the child's parent in the case of a step-parent adoption.

708.3335-2. A petition for the termination of parental rights may be filed when the child has been placed outside of his or her home for fifteen (15) of the most recent twenty-two (22) months unless any of the following applies:

- (a) The child is being cared for by a fit and willing relative of the child;
- (b) The child's permanency plan indicates and provides documentation that termination of parental rights to the child is not in the best interests of the child;
- (c) The Department, if required by a dispositional order, failed to make reasonable efforts to make it possible for the child to return safely to his or her home, did not provide or refer services to the family of the child for the safe return of the child to his or her home that were consistent with the time period in the child's permanency plan; or

(d) Grounds for an involuntary termination of parental rights do not exist.

708.3335-3. A petition for the termination of parental rights shall include the following information:

(a) The name, birth date, address, and tribal affiliation of the child;

(b) The names, birth dates, addresses, and tribal affiliation of the child's parents;

(c) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit; and

(d) One (1) of the following:

(1) A statement that consent will be given to voluntary termination of parental rights as provided in section 708.3433; or

(2) A statement of the grounds for involuntary termination of parental rights under section 708.3234 and a statement of the facts and circumstances which the petitioner alleges establish these grounds.

708.3335-4. *Temporary Order and Injunction Prohibiting Contact.* If the petition includes a statement of the grounds for involuntary termination of parental rights, the petitioner may, at the time the petition is filed, also petition the Court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be terminated from visiting or contacting the child who is the subject of the petition. Any petition under this section shall allege facts sufficient to show that prohibiting visitation or contact would be in the best interests of the child.

(a) The Court may grant an injunction prohibiting the respondent from visiting or contacting the child if the Court determines that the prohibition would be in the best interests of the child. An injunction under this subsection is effective according to its terms but may not remain in effect beyond the date the Court dismisses the petition for termination of parental rights or issues an order terminating parental rights.

708.3335-5. The petitioner shall ensure the summons and petition are served upon the following persons pursuant to the Oneida Judiciary Rules of Civil Procedure:

(a) The parent(s) of the child, including an alleged father if paternity has not been established;

(b) The child's foster parent, guardian or legal custodian, if applicable. If the address has been marked confidential by the Court, the Court shall send a copy of the summons and petition to the home in which the child is placed via first-class U.S. mail; and

(c) The Nation's Child Welfare attorney and the Department, if the petition is filed by anyone other than the Nation's Child Welfare attorney or the Department.

#### **708.3436. Initial Hearing on the Termination of Parental Rights Petition**

708.3436-1. The initial hearing on the petition to terminate parental rights shall be held within forty-five (45) days after the petition is filed. At the hearing the Court shall determine whether any party wishes to contest the petition and inform the parties of their rights.

708.3436-2. If the petition is contested, the Court shall set a date for a fact-finding hearing to be held within sixty (60) days after the hearing on the petition, unless the Court enters an order finding good cause to go outside the time limits.

708.3436-3. If the petition is not contested, the Court shall hear testimony in support of the allegations in the petition and may proceed immediately with a dispositional hearing if the parties agree. Before accepting an admission of the alleged facts in a petition, the Court shall:

(a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes and possible dispositions by the Court;

(b) Establish whether any promises or threats were made to elicit an admission; and

(c) Make such inquiries to establish a factual basis for the admission.

**708.3537. Fact Finding Hearing for a Termination of Parental Rights**

708.3537-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that grounds exist for the termination of parental rights.

708.3537-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.3537-3. If grounds for the termination of parental rights are found by the Court, the Court shall find the parent(s) unfit. A finding of unfitness shall not prevent a dismissal of a termination of parental rights petition. Unless the parties agree to proceed immediately with the dispositional hearing and the Court accepts, the Court shall set a date for a dispositional hearing no later than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits.

**708.3638. Department's Termination of Parental Rights Report**

708.3638-1. In any case that the Department is a party, the Department shall submit a written report to the Court prior to any dispositional hearing, with a copy to the parties no later than seven (7) days prior to the hearing, which shall contain all of the following:

(a) The social history of the child and family, including any relevant medical conditions;

(b) A statement of the facts supporting the need for termination of parental rights;

(c) If the child has been previously adjudicated to be in need of protection or services, a statement of the steps the Department has taken to remedy the conditions responsible for Court intervention and the parent's response to and cooperation with these services. If the child has been removed from the home, the report shall also include a statement of the reasons why the child cannot be returned safely to the family and the steps the Department has taken to effect this return;

(d) A statement applying the standards and factors identified in sections 708.3739-2 and 708.3739-3 regarding the case before the Court; and

(e) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall include a presentation of the factors that might prevent adoption, those that may facilitate adoption, and the Department shall be responsible for accomplishing the adoption.

(1) If the Department determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation for the appointment of guardian for the child.

708.3638-2. The Court may order a report as specified under this section to be prepared by the Department in those cases where the Department is not a party.

**708.3739. Standards and Factors**

708.3739-1. In making a decision about the appropriate disposition for termination of parental rights, the Court shall consider the standards and factors enumerated in this section and any report submitted by the Department.

708.3739-2. The best interests of the child shall be the prevailing standard considered by the Court in determining the disposition of all termination of parental rights proceedings.

708.3739-3. In considering the best interests of the child the Court shall also consider, but not be limited to, the following factors:

- (a) The likelihood of the child's adoption after termination;
- (b) Whether the child will be raised in an environment that is respectful of the child's race(s), culture(s), and heritage(s);
- (c) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home;
- (d) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships;
- (e) The wishes of the child;
- (f) The duration of the separation of the parent from the child; and
- (g) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

**708.3840. Dispositional Hearings for Termination of Parental Rights**

708.3840-1. Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the Court. After receiving any evidence related to the disposition, the Court shall enter a disposition and issue a written decision consistent with the Oneida Judiciary Rules of Civil Procedure.

- (a) The Court shall give the foster parent or other legal custodian a right to be heard at the dispositional hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the dispositional hearing, or to submit a written statement prior to disposition, relevant to the issue of disposition.

708.3840-2. The Court shall enter one (1) of the following dispositions:

- (a) The Court may dismiss the petition if it finds the evidence does not warrant the termination of parental rights or if the Court finds that a parent is attempting to voluntarily terminate their parental rights for the sole purpose of avoiding a child support obligation; or
- (b) The Court may enter an order terminating the parental rights of one or both parents.

708.3840-3. If the rights of both parents, or of the only living parent, are terminated and if a guardian has not been appointed, the Court shall do one (1) of the following while adhering to the placement preferences pursuant to section 708.4011-1 when possible:

- (a) Transfer guardianship and custody of the child pending adoptive placement to:
  - (1) A tribal or county department authorized to accept guardianship;
  - (2) A child welfare agency licensed to accept guardianship;
  - (3) The State of Wisconsin upon written confirmation from the State that they are willing to accept guardianship;

(4) A relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative or is receiving payments for providing care and maintenance for the child; or

(5) An individual who has been appointed guardian of the child by a court of a competent jurisdiction; or

(b) Appoint a guardian and transfer guardianship and custody of the child to the guardian.

708.~~38~~40-4. The written Court order shall include the following:

(a) If the Court dismisses the petition, the order shall contain the reasons for dismissal; or

(b) If the disposition is for the termination of parental rights, the order shall contain all of the following:

(1) The identity of any agency, department, or individual that has received guardianship of the child;

(2) If an agency or department receives guardianship and custody of the child, an order ordering the child into the placement and care responsibility of the agency or department and assigning the agency or department primary responsibility for providing services to the child; and

(3) A finding that the termination of parental rights is in the best interests of the child.

708.~~38~~40-5. If an order is entered to terminate a parent's rights, the Court shall orally inform the parent(s) who appear in Court or place in the written order the ground(s) for termination of parental rights specified in section 708.~~32~~34.

708.~~38~~40-6. If the Court terminates parental rights, the Department, or the Court if the Department is not a party to the action, shall forward the following information to the State of Wisconsin:

(a) The name, date of birth, and tribal affiliation of the child whose birth parent's rights have been terminated;

(b) The names and current addresses of the child's birth parents, guardian and legal custodian; and

(c) Any medical or genetic information received by the Department.

708.~~38~~40-7. If only one parent consents for a voluntary termination of parental rights or if the grounds for involuntary termination of parental rights are found to exist as to only one parent, the rights of only that parent may be terminated without affecting the rights of the other parent if the Court finds such termination to be in the best interest of the child.

## **708.~~39~~41. Adoption**

708.~~39~~41-1. Adoptions under this law shall take the form of customary adoptions unless the Court determines there is good cause for the adoption to be closed.

708.~~39~~41-2. *Customary Adoptions*. The purpose of customary adoption is not to permanently deprive the child of connections to, or knowledge of, the child's biological family, but to provide the child a permanent home. The following shall apply to all customary adoptions and shall be contained in all adoptive orders and decrees:

(a) The relationship between an adoptive parent and adoptive child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family



and his or her Oneida heritage, if applicable. The child may obtain adoption information from files maintained by the Court or Department;

(c) Adoption shall not prevent an adoptive child from inheriting from a biological parent in the same manner as any other biological child. The biological parents shall not be entitled to inherit from an adoptive child in the same manner as parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if biological parents and child;

(d) Although parental rights have been terminated, the biological parent may retain certain residual parental rights when appropriate as determined by agreement between the adoptive parent and biological parent made through peacemaking, or by order of the Court. Such residual parental rights may include:

(1) The right to communication;

(2) The right to visitation;

(3) The right or obligation to contribute to support or education;

(4) The right to be consulted regarding the child's religious affiliation, major medical treatment, marriage, or other matters of major importance in the child's life; and/or

(5) Such other residual rights the Court may deem appropriate, considering the circumstances.

(e) Adoption does not extinguish the relationships between the child and the child's extended biological family. The child's extended biological family retains the right to reasonable communication and visitation with the child, subject to reasonable controls of the adoptive parents.

~~708.39~~<sup>41</sup>-3. *Closed Adoptions.* Closed adoptions occur in situations where a child needs a permanent home and it is necessary to sever all ties between the child and his or her biological family. The following shall apply to all closed adoptions:

(a) The relationship between an adoptive parent and adoptive child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The relationship between the adopted child and all persons whose relationship to the adopted child is derived through the biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist;

(c) The child's biological family shall not be entitled to or have access to any information regarding said child;

(d) The child shall be entitled to information and knowledge regarding his or her culture and heritage; and

~~(e)~~ The child shall be entitled to information regarding his or her biological family upon reaching the age of majority. The child may obtain adoption information from files maintained by the Court or Department.

## ~~708.40~~<sup>42</sup>. **Adoption Criteria and Eligibility**

~~708.40~~<sup>42</sup>-1. *Criteria for Adoption.* Any child who is subject to this law may be adopted if any of the following criteria are met:

(a) Both of the child's parents are deceased;

(b) The parental rights of both of the child's parents with respect to the child have been terminated;

(c) The parental rights of one of the child's parents with respect to the child have been terminated and the child's other parent is deceased; or

(d) The person filing the petition for adoption is the spouse of the child's parent and either of the following applies:

(1) The child's other parent is deceased; or

(2) The parental rights of the child's other parent with respect to the child have been terminated.

708.4042-2. *Eligibility.* The following persons are eligible to adopt a child who falls under the jurisdiction of this law pending the successful clearing of a background check:

(a) A married adult couple;

(b) Either spouse if the other spouse is a parent of the child; or

(c) An unmarried adult.

708.4042-3. If the person proposing to adopt the child cannot successfully clear a background check, and any convictions the person may possess have not been pardoned, forgiven, reversed, set aside or vacated, the Court may still deem the person eligible to adopt if the Court determines by clear and convincing evidence that the adoption would be in the best interests of the child.

### **708.4143. Adoption Procedure**

708.4143-1. *Petition for Adoption.* A person proposing to adopt shall initiate a proceeding for the adoption of a child by filing a petition with the Court. The petition shall include the following information:

(a) The name, birth date, address, and tribal affiliation of the petitioner;

(b) The name, birth date, address, and tribal affiliation of the child;

(c) The names, birth dates, addresses, and tribal affiliation of the child's biological parents;

(d) The name by which the child shall be known if the petition is granted;

(e) The relationship of the petitioner to the child; and

(f) A copy of the order terminating parental rights of the child's biological parent(s).

708.4143-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within sixty (60) days. Notice of the hearing shall be served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

708.4143-3. When a petition for adoption is filed, the Court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child. The Court shall order one (1) of the following to conduct the investigation:

(a) If the Department, or another agency or department, has guardianship of the child, the agency or department that has guardianship; or

(b) If no agency or department has guardianship of the child and a relative, including a stepparent, has filed the petition for adoption, the Department.

708.4143-4. The Department or other agency or department making the investigation shall file its report with the Court prior to the hearing on the petition and shall provide the parties with a copy of the report at least three (3) business days prior to the hearing.

708.4143-5. If the report of the investigation is unfavorable or if it discloses a situation which, in the opinion of the Court, raises a serious question as to the suitability of the proposed adoption, the Court may appoint a guardian ad litem for the child whose adoption is proposed.

708.434-6. During the hearing the parties may agree to attend peacemaking to establish an agreement regarding residual rights of a birth parent, birth sibling, or other birth relative of the child.

708.4143-7. If after the hearing and a study of the report required by section 708.4143-3 the Court is satisfied that the adoption is in the best interests of the child, the Court shall make an order granting the adoption. The order may change the name of the child to that requested by petitioners.

708.4143-8. After the order of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent thereafter exists between the adopted child and the adoptive parents. The relationship between the adopted child and biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist, excluding any residual rights granted to the biological parents and extended family through customary adoption. If the biological parent is the spouse of the adoptive parent, the relationship shall be completely altered and those rights, duties, and other legal consequences shall cease to exist only with respect to the biological parent who is not the spouse of the adoptive parent.

708.4143-9. After entry of the order granting the adoption, the Department shall promptly mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any additional data needed for the issuance of a new birth certificate.

#### **708.4244. Non-Compliance with a Residual Rights Agreement**

708.4244-1. Any party to a residual rights agreement may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

708.4244-2. After receiving a petition for action regarding a residual rights contact agreement the Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

708.4244-3. If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

708.4244-4. The Court may not revoke a termination of parental rights order or an order of customary adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a residual rights agreement; however, the parties may return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

#### **708.4345. Peacemaking and Mediation**

708.4345-1. The Court may refer the parties to peacemaking or mediation if the parties agree to attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or mediation if attending the session will cause undue hardship or would endanger the health or safety of a party.



1964 | 708.45-2. When the parties attend peacemaking or mediation based on a referral from the Court,  
1965 the Court shall enter an order finding good cause to suspend the time limits established under this  
1966 law.

1967  
1968 | **708.4446.** Appeals

1969 | 708.4446-1. Appeals of all orders issued under this law shall be heard by the Nation's Court of  
1970 Appeals in accordance with the Rules of Appellate Procedure.

1971  
1972 | **708.4547.** Liability

1973 | 708.4547-1. No liability shall attach to the Department, Indian Child Welfare Worker, the  
1974 Nation's Child Welfare Attorney or any person acting under their authority for statements, acts  
1975 or omissions made in good faith while in the course of activities taken under this law.

1976  
1977 | *End.*

1978 | Adopted – BC-\_\_\_\_\_



Legislative Operating Committee  
June 6, 2017

## Business Committee Meetings Law

<b>Submission Date:</b> 8/27/15	<b>Public Meeting:</b> 12/29/16, 5/18/17
<b>LOC Sponsor:</b> Brandon Stevens	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This is a proposal for a new law to govern the structure of the Oneida Business Committee Meetings, creating a more efficient process for conducting Tribal business.*

**9/2/15 LOC:** Motion by Jennifer Webster to add the Business Committee Meetings Law to the Active Files List; seconded by Tehassi Hill. Motion carried unanimously. *Note: Brandon Stevens will be the sponsor for this item.*

**11/4/15 LOC:** Motion by Fawn Billie to accept the memorandum for the Business Committee Meetings Law as FYI and defer to the sponsor to bring back when ready; seconded by Tehassi Hill. Motion carried unanimously.

**5/4/16 LOC:** Motion by Fawn Billie to make the Business Committee Meeting law a priority item on the Active Files List and to direct the sponsor to schedule a strategy meeting to discuss possible solutions to mitigate tension and improve the communication process at Business Committee meetings; seconded by Jennifer Webster. Motion carried unanimously.

**9/21/16 LOC:** Motion by Jennifer Webster to accept the Oneida Business Committee Meetings law and send to the Legislative Reference Office for legislative and fiscal analysis; seconded by Tehassi Hill, seconded by Fawn Billie. Motion carried unanimously.

**10/19/16:** *Quarterly Sponsor Update Meeting.* Present: Brandon Stevens, Jennifer Falck, Clorissa Santiago, Maureen Perkins, and Tani Thurner. LRO Director will schedule a work meeting to decide on some policy issues.

**11/7/16:** *Work meeting held.* Present: Clorissa Santiago, Maureen Perkins, Tehassi Hill, Cathy Bachhuber, Fawn Billie, Brandon Stevens, Jo Anne House. In addition to working out draft details, the group decided to request that the Secretary change the Regular BC Meeting agenda, to improve efficiency.

**11/16/16 LOC:** Motion by Fawn Billie to approve the Oneida Business Committee Meetings Law public meeting packet with the noted change and direct the LRO to hold a public meeting on December 29, 2016; seconded by Tehassi Hill. Motion carried unanimously.

**12/29/16:** Public meeting held.

**3/1/17 LOC:** Motion by Tehassi Hill to accept the public meeting comments and defer this item to a work

meeting; seconded by Fawn Billie. Motion carried unanimously.

**3/15/17:** *Work meeting held.* Present: Brandon Stevens, Tehassi Hill, Jenny Webster, David Jordan, Fawn Billie, Clorissa Santiago, Maureen Perkins, Jen Falck, Danelle Wilson, Mike Debraska. Public meeting comments were reviewed and considered. Drafter will update draft to reflect revisions discussed.

**4/5/17 LOC:** *Item deleted at adoption of the agenda and deferred to a work meeting.*

**4/17/17:** *Work meeting held.* Present: Brandon Stevens, Tehassi Hill, Jenny Webster, David P. Jordan, Fawn Billie, Clorissa Santiago, Maureen Perkins, Jen Falck. Updated revisions to draft were discussed. Drafter will update draft and prepare a public meeting packet.

**4/19/17 LOC:** Motion by David P. Jordan to approve the public meeting packet and forward the Oneida Business Committee Meetings law to a public meeting to be held on May 18, 2017; seconded by Fawn Billie. Motion carried unanimously.

Motion by Jennifer Webster to request the Finance Department to prepare a fiscal analysis due to the Legislative Reference Office on May 17, 2017; seconded by Fawn Billie. Motion carried unanimously.

**5/18/17:** Public Meeting Held.

#### **Next Steps:**

- Accept the public meeting comments; and
  - Review and consider comments during the 6/7/17 LOC meeting; or
  - Defer the review and consideration of the public meeting comments to a work meeting.



TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney  
DATE: June 7, 2017  
RE: Oneida Business Committee Meetings Law: Public Meeting Comment Review

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On May 18, 2017, a second public meeting was held regarding the proposed Oneida Business Committee Meetings law. This memorandum is submitted as a review of the oral and written comments received within the public meeting and public comment period. The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

#### **Comment 1 – General Comment Regarding the Authority of the OBC to Adopt this Law:**

**Bonnie Pigman (written):** For the record I am not opposed to the purpose of this law, but I strongly, oppose the Oneida Business Committee being able to adopt it or being able to amend anything in it. I feel the Oneida Business Committee should not be creating a law for their benefit and then be able to adopt or amend it, stating legislatively the GTC has given them this authority. I feel GTC gave the Oneida Business Committee authority to create and approve laws, but not laws that are developed for their (OBC) benefit, under the guise it's for the benefit of the membership. GTC is their supervisor and therefore, should approve any laws the OBC wishes to create to help them do their job. Allowing the Oneida Business Committee to adopt this law would be like someone being able to be their own judge, jury and carry out their own sentencing. I recommend line 29 be re-written as:

117.2-2 this law may only be amended or repealed by the General Tribal Council ...

#### ***Response***

The Oneida General Tribal Council has delegated authority to the Oneida Business Committee and the Legislative Operating Committee for the development and adoption of legislation.

Article III Section 3 of the Constitution of the Oneida Nation states that the “qualified voters of the Oneida Nation shall elect from among the enrolled Oneida Nation members age twenty-one (21) and over who physically reside in either Brown or Outagamie Counties of Wisconsin by secret ballot (a) a chairman; (b) a vice-chairman; (c) a secretary; (d) a treasurer; (e) and five councilmen. These shall constitute the Business Committee and shall perform such duties as may be authorized by the General Tribal Council.”

The General Tribal Council then adopted resolution GTC-01-07-13-A, which adopted the Legislative Procedures Act (LPA). The LPA created the Legislative Operating Committee (LOC) and delegated duties and responsibility to the LOC by stating the LOC shall be responsible for

the development of laws for the Nation in accordance with the LPA, other such duties as provided by laws of the Nation and the development and maintenance of the Oneida Register. *[see LPA section 109.4].*

The LPA then states that the LOC shall forward proposed legislation to the Oneida Business Committee when legislation is ready for consideration, and the Oneida Business Committee shall consider the legislation or forward the legislation to the Oneida General Tribal Council for consideration. The LPA then goes on to state that the Oneida Business Committee shall amend and repeal laws in accordance with the laws governing Oneida Business Committee action. The General Tribal Council shall adopt, amend and repeal laws in accordance with the laws governing General Tribal Council action. *[see LPA section 109.9-2].*

Since the Oneida Business Committee Meetings law governs the action of the Oneida Business Committee during their meetings, the Oneida Business Committee should be the adopting party of this Law.

There is no recommended revision based on this comment.

### ***LOC Consideration***

## **Comment 2 – Public Comment and Discussion of Individuals:**

### **117.5-2. Public Comment.**

- (a) The Oneida Business Committee meetings are conducted to make decisions regarding the business of the Nation as delegated by the General Tribal Council and the Oneida Nation Constitution. However, public comment is a resource for ideas and concerns to be raised and addressed by the Oneida Business Committee.
- (b) Individuals shall be allowed to make public comments at the beginning of each agenda item only. All public comments made shall be relevant to the current agenda item. Each individual shall be allowed to give public comment one time per agenda item. Each individual shall be limited to speaking for a maximum of three (3) minutes each per agenda item. The time limitation may be extended by request of the individual with approval of the Oneida Business Committee.
- (c) All comments are subject to the limitations of section 117.5-1 when discussing individuals or groups of individuals.
- (d) No action is required to accept or otherwise take action regarding a comment being made. Oneida Business Committee meeting attendees may ask questions while providing public comment. If an Oneida Business Committee meeting attendee can provide a proper response to a posed question then that individual may answer the question.
- (e) Public comments shall be relevant to the current agenda item and may be any of the following:

1. A request to have the Oneida Business Committee review an issue or action;
2. A comment on an item on the agenda;
3. Praise regarding an entity, an individual or an employee;
4. A public notice about an activity or fundraising event; and/or
5. Other comments deemed pertinent by the presiding Chairperson.

**(f) The Oneida Business Committee shall proceed with conducting official business related to the agenda item once all public comments are received.**

**Bonnie Pigman (written):** In section 117.5-2. Public Comment. Sub-section (b) states the time limitation may be extended by request of the individual with approval of the OBC. The sub-section does not state when an individual can do this or the manner by which to make the request. think three {3} minutes to make comment per agenda item is not sufficient and depending on some of the more controversial subjects the entity holding the public meeting should recognize this prior to the public meeting and adjust the public comment time limits according. I think not doing so is disrespectful to those individuals who made time to come and share their thoughts on the subject matter (per 117.5-1.. .. there is a need for frank and honest discussions in all meeting of the OBC))

### ***Response***

Section 117.5-2(b) of the Law states that each individual may have up to three (3) minutes, per agenda item, to provide public comment. If the individual feels the three (3) minutes are not long enough to provide public comment on that agenda item the Law allows the individual to request an extension from the Oneida Business Committee, and the individual can make that request by simply asking the Oneida Business Committee during their public comment. This time extension is not unilateral for all speakers, but applies solely to the individual making the request.

The commenter then discusses that “*depending on some of the more controversial subjects the entity holding the public meeting should recognize this prior to the public meeting and adjust the public comment time limits according,*” but this time limit extension applies solely to the public comment period each Oneida Business Committee meeting attendee is allotted at the beginning of each agenda item, and not to general public meetings for proposed legislation or rules held by the Legislative Operating Committee or other entity of the Nation.

The purpose of conducting Oneida Business Committee meetings is for official business of the Oneida Nation, as delegated to the Oneida Business Committee under the Constitution of the Oneida Nation, to be completed. The Oneida Business Committee meetings law intends to balance the need for official business to be conducted by the Oneida Business Committee with open discussion from the community related to items on the agenda.

There is no recommended revision based on this comment. The LOC can consider whether a three (minute) allotment for public comment on each agenda item, with an opportunity to request an extension from the Oneida Business Committee is sufficient.

### ***LOC Consideration***

### Comment 3 – General Comment Regarding the Public Comment Period:

**Ed Delgado (oral):** But my comment on this, umm, you make, you're proposing that just during the beginning of the meeting General Tribal Council, I mean attendees can make comments. And then you gotta be pretty much, you're done, if you're not a member of on the agenda, or anything like, you're done making comments. And then for the rest of the meeting it sounds to me that if you want to stay, you're just listen to, you know you'd be like the peanut gallery. You're there to listen only. And that might work in some other smaller, I mean bigger cities or big nations or big states, but I don't think it works for a small tribe. Even though we are a big tribe, when it comes to something like this we are, we have a small population. And not everyone has the time or the energy to come up and make comments, or be familiar with what's going on within their tribe. Most people who do decide to come, they, they're interested in the presentations given by the many programs. And after they, the way I read it, when somebody provides a report the membership in attendance, they'd be done already because the public comment area time is done. So you'd have to sit there for the rest of the meeting with your mouth quiet. And as it is, as it is the tribal membership gets very little say and provides very little comment in the legislative process and this will diminish that. I think the Business Committee should be encouraging public comment. Respectful, you got that in here, that's very good. But to discourage public comment after a report is given, umm or during a report, or. What we have now, umm I think that's a good thing. It provides the tribe, the Nation, with an opportunity to provide comment on the programs that we fund and that's important. And other than that it's pretty much okay. But I think you're going to run into a roadblock if you try and promote this thing that whereby you have to come and speak when you got your public comment time but you haven't heard the reports yet. Uhh and you'd have to sit through the, I don't know, it just, I just do not think its gonna fly. So thank you.

### *Response*

The commenter discusses a prior draft of the Law in which individuals were limited to providing public comment during one period at the beginning of the agenda for the Oneida Business Committee meeting. The LOC received comments about this proposal during the December 29, 2016, public meeting for the Law and made revisions to reflect the desires of the community. Section 117.5-2 of the Law now describes the new proposed policy regarding public comment, which allows an individual to provide public comment at the beginning of each agenda item for a maximum of three (3) minutes. The Oneida Business Committee meetings law intends to balance the need for official business to be conducted by the Oneida Business Committee with open discussion from the community related to items on the agenda.

There is no recommended revision based on this comment.

### *LOC Consideration*



#### Comment 4 – Responsibilities of Oneida Business Committee Meeting Attendees:

**117.8-1. Behavior of Oneida Business Committee Meeting Attendees.** Keeping in line with the Oneida principle of Kalihwi-ȳ% all attendees including the Oneida Business Committee members are expected to treat each other with respect and kindness. Attendees shall not:

- (a) Use profanity, interrupt others, heckle or threaten people, disrespect property or exhibit behavior that disrupts the meeting or endangers the safety of other attendees;
- (b) Be under the influence of alcohol or illegal drugs;
- (c) Have a weapon on their person while on any public property of the Nation or at any event sponsored by the Nation; and
- (d) Take action that violates any laws, rules or policies of the Nation.

**Bonnie Pigman (written):** In section 117.8-1. Behavior of Oneida Business Committee Attendees. It identifies that the OBC members are included as attendees, so I am requesting letter (d) be added to state "when OBC members are arguing with each other, non-OBC members (attendees) be able to request the remaining OBC body, regardless of title, to immediately notice the offending OBC members and remind them of the consequences for their inappropriate behavior". There have too many times that I as an attendee have sat in OBC sessions and witnessed the inappropriate behaviors between OBC members. The behaviors of the OBC to, need to be addressed.

#### *Response*

The commenter wishes to add a provision to the law that would allow Oneida Business Committee meeting attendees to make a request to the Oneida Business Committee to provide notice to an Oneida Business Committee meeting member who is violating the behavior requirements found in section 117.8 of the Law. This added provision is unnecessary because the Law already requires the Oneida Business Committee members to ensure every attendee is following the requirements under the Law, or else the Oneida Business Committee would be tasked with removing the individual. The Law states the following:

**117.9-2. Removal of a Disorderly or Disruptive Person.** If a meeting is willfully interrupted by a person and the meeting cannot proceed forward or the person violates section 117.8-1 regarding behavior of Oneida Business Committee attendees and/or section 117.5-1 regarding the discussion of individuals, the Oneida Business Committee shall decide if the individual shall be removed from the meeting. The Oneida Business Committee's decision to remove a person shall be final and not appealable. At the decision of the Oneida Business Committee the presiding Chairperson shall order the sergeant-at-arms to remove the person from the meeting.

Whether the disruptive or disorderly individual is a member of the community or a member of the Oneida Business Committee, the Oneida Business Committee as a whole is still responsible for ensuring the meeting is not willfully interrupted or that a person does not violate the behavior requirements in the Law and does not violate the requirements for the discussion of individuals.

At any time during the meeting, the Law allows a member of the Oneida Business Committee to request a point of order to direct compliance with requirements set forth in this Law. [see *OBC Meetings law section 117.10*].

There is no recommended revision based on this comment. The LOC may consider whether the Law properly addresses potential improper behavior of an Oneida Business Committee member, or whether more detail should be added to address this issue.

### *LOC Consideration*

#### **Comment 5 – Removal of a Disorderly or Disruptive Person:**

**117.9-4. Banning a Disorderly or Disruptive Person.** The Oneida Business Committee may permanently ban a person from attending Oneida Business Committee meetings for any of the following:

- (a) A person is repeatedly removed from Oneida Business Committee meetings for disorderly or disruptive behavior; or
- (b) The behavior of a person reaches such a severe level that an automatic ban from attending Oneida Business Committee meetings is necessary for the protection of the health and safety of all other Oneida Business Committee meeting attendees.

**Bonnie Pigman (written):** One question: Might it be possible an OBC member gets permanently banned, since they too are defined as an attendee?

### *Response*

If an Oneida Business Committee member meets the requirements for banning a disorderly or disruptive person found in section 117.9-4 of the Law then that Oneida Business Committee member can be banned.

There is no recommended revision based on this comment. The LOC can determine whether or not they agree with section 117.9-4 of the Law which would allow Oneida Business Committee members to be banned from attending Oneida Business Committee meetings.

### *LOC Consideration*

#### **Comment 6 – Removal of a Disorderly or Disruptive Person:**

**Bonnie Pigman (written):** In section 117.91 feel it should be stated "in the event the OBC would lose quorum as a result of OBC members being removed, the OBC meeting will continue until the next scheduled break. This way tribal business can still get accomplished.

### ***Response***

The enforcement section of this Law states that the “law shall be enforced according to Robert’s Rules of Order.” [see *OBC Meetings law section 117.10*]. Robert’s Rules of Order Article XI section 64 states that a quorum of an assembly is such a number as must be present in order that business can be legally transacted. Article III Section 3 of the Constitution of the Oneida Nation states that “a majority of the Business Committee including the chairman or vice-chairman shall constitute a quorum of the body.” If an Oneida Business Committee member is removed from the meeting and quorum is lost, then the Oneida Business Committee meeting would not be able to continue on with business.

There is no recommended revision based on this comment.

### ***LOC Consideration***

## **Comment 7 – General Comment Regarding Laws:**

**Barbara Cornelius (oral):** Hi, I’m Barbara Cornelius, enrollment number 753. I just think we’re creating too, way too many laws. I don’t know if we need a law for the Business Committee meetings or should it just be a policy. And that’s true with a lot of stuff I see coming up. We’re creating too many laws, and the laws really that I see and how they’re written really should be policy because once you do that law, it’s hard to one, usually it’s hard to change that law, and two, it’s a little easier to say you give yourself more flexibility when you put it into policy. Because then in the policy you can change and do what you need to do when situations might change and stuff. But it just seems like the tribe is getting way too law oriented. And so I don’t know if the Business Committee meeting has to have law. That’s just my thoughts.

### ***Response***

The commenter states that the Nation is too oriented on the development of laws and instead should focus on the creation of more policies. The LOC has directed that moving forward all legislation would be categorized as laws, and not codes, policies, ordinances, etc. due to the fact that all legislation must follow the Legislative Procedures Act. The Legislative Procedures Act (LPA) was adopted by the Oneida General Tribal Council by resolution GTC-01-07-13-A. The purpose of the LPA is to provide a process for the adoption of laws of the Nation, and to set forth lawmaking requirements that will apply to all legislation considered by the Oneida Business Committee and Oneida General Tribal Council. [see *LPA section 109.1-1*]. The LPA requires both a financial and legislative analysis to be completed for all proposed legislation. [see *LPA section 109.6 and 109.7*]. The LPA also requires the Legislative Operating Committee to provide

a public meeting and public comment period to garner opinion and input from the community. [see LPA section 109.8]. The LOC must then fully review and consider every comment that was received, both oral testimony and written comments, during the public comment period. [see LPA section 109.8-4].

There is no recommended revision based on this comment. It is a policy determination for the LOC to decide if policies or laws should be utilized.

### ***LOC Consideration***

#### **Comment 8 – General Comment Regarding the Use of the Term Attendees:**

**Ed Delgado (oral):** I’ve had my eye on this little thing for quite some time. On the plus side, you do call people who are coming to speak at BC meetings attendees, and we are attendees when we are there, its just you’re correct there. I just wish you would think about revising your GTC meeting rules because on that resolution you called the General Tribal Council attendees, and that’s incorrect.

### ***Response***

In the Business Committee Meetings law “attendees” refers to a person who attends the Business Committee meeting. The term attendees has the same use and meaning in the General Tribal Council Meetings law, except for the people attending the General Tribal Council meetings are the people who comprise the General Tribal Council, or the governing body of the Oneida Nation. The use of the term attendees in this law has no bearing on the use of the term attendees in the General Tribal Council Meetings law.

There is no recommended revision based on this comment.

### ***LOC Consideration***

**Title 1. Government and Finances – Chapter 117**  
**ONEIDA BUSINESS COMMITTEE MEETINGS**

117.1.	Purpose and Policy	117.7.	Agenda
117.2.	Adoption, Amendment, Repeal	117.8.	Responsibilities of Oneida Business Committee
117.3.	Definitions		Meeting Attendees
117.4.	Rules of Order	117.9.	Removal of a Disorderly or Disruptive Person
117.5.	Public Comment and Discussion of Individuals	117.10.	Enforcement
117.6.	Oneida Business Committee Meetings Schedule		

**117.1. Purpose and Policy**

117.1-1. *Purpose.* The purpose of this law is to identify how the Oneida Business Committee will carry out its responsibilities. Meetings of the Oneida Business Committee are for the purpose of conducting the business of the Oneida Nation as delegated to the Oneida Business Committee under the Constitution of the Oneida Nation.

117.1-2. *Policy.* It is the policy of the Nation that the Oneida Business Committee be clear and consistent in its actions and be guided by the responsibilities grounded in the Oneida culture and the Oneida Nation Constitution. It is further the policy that Oneida Business Committee meetings to be open to the public and to have discussions related to the items on the agenda in order to have the widest possible viewpoint, to request and receive technical advice and respect conflicting views.

117.1-3. *Roles and Responsibilities.* The Oneida Business Committee is elected by the membership of the Nation and is delegated legislative responsibility under Article IV of the Constitution of the Oneida Nation, General Tribal Council resolution # GTC-2-15-82, adoption of job descriptions in July of 1990, and a motion at the October 1998 General Tribal Council meeting. The work associated with this legislative responsibility is carried out through various subcommittees such as, but limited to, the Legislative Operating Committee, Community Development and Planning Committee, and Quality of Life Committee in order to obtain the broadest and most informed discussion. The action regarding this legislative responsibility is taken at a regular, special, or emergency Oneida Business Committee meeting, or when necessary, by e-poll in accordance with approved processes. The goal of this law is to formalize the action of legislative responsibility taking place at Oneida Business Committee meetings and the work of legislative responsibility within subcommittees.

**117.2. Adoption, Amendment, Repeal**

117.2-1. This law was adopted by the Oneida Business Committee by resolution BC -\_\_\_\_\_.

117.2-2. This law may be amended or repealed by the Oneida Business Committee or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

117.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

117.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, this law repeals the following:

- (a) Resolution # BC-08-14-91-A *BC Meeting – Executive Session for Employee Complaints.*

117.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

**117.3. Definitions**

117.3-1. This section shall govern the definitions of words or phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Board, Committee or Commission” means a board, committee or commission created by the General Tribal Council or the Oneida Business Committee with members appointed by the Oneida Business Committee or elected by the Nation’s membership.

(b) “Constitution” means the Constitution and By-laws of the Oneida Nation, as amended.

(c) “Corporation” means a business that is chartered by the Nation.

(d) “Employee” means anyone employed by the Nation in one of the following employed capacities: full-time, part-time, emergency temporary, limited term or on a contractual basis. For purposes of this law the term employee also includes political appointees.

(e) “Entities” means all boards, committees, commissions, departments, and programs of the Nation.

(f) “Executive session” means a meeting which is held to discuss matters that require confidentiality and are not open to the public.

(g) “Kalihwi=y%” means the good mind principle which represents “the use of the good words about ourselves, our Nation, and our future.”

(h) “Member of the Nation” means an individual enrolled in the Oneida Nation.

(i) “Nation” means the Oneida Nation.

(j) “Officer” means an individual holding the position of chairperson, vice-chairperson, secretary or treasurer on a board, committee or commission.

(k) “Open session” means a meeting which is held in a place reasonably accessible to the public at all times.

(l) “Roberts Rules of Order” means a handbook for running meetings effectively and efficiently that sets the guidelines for such issues as leading debates; recognizing speakers; defining the role of the chair and other officers; proposing, seconding, and voting on motions; and writing and amending constitutions and bylaws.

**117.4. Rules of Order**

117.4-1. The Oneida Business Committee shall use Robert’s Rules of Order, current edition, for the procedural rules of its meetings except as specifically modified by the Constitution.

117.4-2. The Oneida Business Committee may:

(a) amend, modify, or direct that a rule shall not apply; and

(b) adopt Standard Operating Procedures that provide administrative guidance in the application of rules.

**117.5. Public Comment and Discussion of Individuals**

117.5-1. *Discussion of Individuals.* There is a need for frank and honest discussions in all meetings of the Oneida Business Committee. Such discussions often include personal observations, evaluations, and judgments of other employees and members of the Nation. The negative or disrespectful discussion of individuals in open session undermines the morale and trust of employees and members of the Nation.

(a) It is the policy of the Nation that discussion in open and public meetings of the Oneida Business Committee be strictly conducted in an orderly, civil manner avoiding acrimony and ad hoc remarks.

(b) All discussion relevant to an agenda item regarding a member of the Nation or an employee and the actions, activities, and/or performance responsibilities of that individual may be respectfully discussed during the open session of the Oneida Business Committee meeting.

(c) Should any information be received at any meeting of the Oneida Business Committee that implicates the integrity, honesty, or morality of a member of the Nation or an employee, such discussion shall be immediately stopped. The presiding Chairperson shall regulate the discussion to ensure the integrity, honesty or morality of an individual is not implicated during any discussions.

(d) The Oneida Business Committee shall have the authority to redact any statements made during open session regarding improper discussion of an individual from all video and audio recordings of the Oneida Business Committee meetings.

117.5-2. *Public Comment.*

(a) The Oneida Business Committee meetings are conducted to make decisions regarding the business of the Nation as delegated by the General Tribal Council and the Oneida Nation Constitution. However, public comment is a resource for ideas and concerns to be raised and addressed by the Oneida Business Committee.

(b) Individuals shall be allowed to make public comments at the beginning of each agenda item only. All public comments made shall be relevant to the current agenda item. Each individual shall be allowed to give public comment one time per agenda item. Each individual shall be limited to speaking for a maximum of three (3) minutes each per agenda item. The time limitation may be extended by request of the individual with approval of the Oneida Business Committee.

(c) All comments are subject to the limitations of section 117.5-1 when discussing individuals or groups of individuals.

(d) No action is required to accept or otherwise take action regarding a comment being made. Oneida Business Committee meeting attendees may ask questions while providing public comment. If an Oneida Business Committee meeting attendee can provide a proper response to a posed question then that individual may answer the question.

(e) Public comments shall be relevant to the current agenda item and may be any of the following:

1. A request to have the Oneida Business Committee review an issue or action;
2. A comment on an item on the agenda;
3. Praise regarding an entity, an individual or an employee;
4. A public notice about an activity or fundraising event; and/or
5. Other comments deemed pertinent by the presiding Chairperson.

(f) The Oneida Business Committee shall proceed with conducting official business related to the agenda item once all public comments are received.

**117.6. Oneida Business Committee Meetings Schedule**

117.6-1. *Annual Schedule.* The Oneida Nation Secretary shall present, on or around October of each year, a proposed schedule for regular meetings of the Oneida Business Committee for approval by the Oneida Business Committee.



117.6-2. *Reporting Schedule.* The Oneida Nation Secretary shall present, on or around October of each year, a proposed schedule for presentation of reports by entities at regular meetings of the Oneida Business Committee for approval by the Oneida Business Committee.

#### **117.7. Agenda**

117.7-1. *Agenda.* The agenda for Oneida Business Committee meetings shall contain the following sections. The general characteristics of each section are defined below. The Oneida Business Committee agenda shall only contain sections that contain business that must be addressed during that meeting. Not all sections of the agenda will be addressed at every meeting of the Oneida Business Committee.

(a) *Call to Order.* The presiding Chairperson shall call the meeting to order, shall establish the existence of a quorum, and identify reasons why members of the Oneida Business Committee are not present.

(b) *Adopt the Agenda.* The agenda for the meeting shall contain necessary subsections so as to identify each section of the agenda that will be used during that meeting. If there are amendments to the agenda, they should be made during this section, but are not required to be done under this section of the agenda.

(c) *Oath of Office.* Individuals who have been elected or appointed to an office on a board, committee, commission, as a police officer or other employee requiring an oath to be taken shall be given the oath of office,

(d) *Minutes.* The minutes of each regular, special and emergency meeting of the Oneida Business Committee presented for approval shall be listed in this section of the agenda.

(e) *Resolutions.* This section shall be used to present all resolutions to the Oneida Business Committee for adoption.

(f) *Appointments.* Actions regarding appointments to boards, committees, commissions, corporations, and other memberships of the Nation shall be taken in this section of the agenda in accordance with the Nation's laws, policies and rules, specifically those governing boards, committees and commissions of the Nation.

(g) *Standing Committees.* Standing committees are entities of the Oneida Business Committee delegated certain responsibilities to act, and whose actions are reported to, the Oneida Business Committee. Such actions may require further approval by the Oneida Business Committee to carry out, such as the Finance Committee meeting minutes, or adoption of laws and rules presented by the Legislative Operating Committee. Items presented in this section of the agenda shall include minutes, quarterly reports, and other actions presented by the Standing Committee.

(h) *General Tribal Council.* This section of the agenda shall only be open to members of the Nation and shall address issues related to General Tribal Council meetings including, but not limited to, scheduling General Tribal Council meetings, accepting and directing action regarding petitions, and approving materials for presentation at General Tribal Council meetings. The Oneida Business Committee may allow individuals who are not members of the Nation to attend this section of the agenda if the attendance of the individual is required for official purposes.

(i) *Standing Items.* This section of the agenda shall be used to present items which the Oneida Business Committee has determined require a constant, short term, presence on the agenda because repeat actions and/or follow-up actions may be necessary.

(j) *Unfinished Business*. This section of the agenda shall be used when agenda items from prior meetings were unable to be completed.

(k) *Tabled Business*. This section of the agenda shall be used when an agenda item has been specifically tabled from a prior meeting. The item on the agenda shall be clearly labeled as a tabled action and the date of the meeting at which it was tabled shall be noted.

(l) *New Business*. Any business brought before the Oneida Business Committee that does not otherwise fit in any of the other agenda categories shall be placed in this section of the agenda.

(m) *Travel Reports*. This section of the agenda shall be used to present reports regarding approved travel that is required to be presented to or approved by the Oneida Business Committee.

(n) *Travel Requests*. This section of the agenda shall be used to present requests for travel by an Oneida Business Committee member or where approval by the Oneida Business Committee is required.

(o) *Reports*. This section of the agenda shall be used to present quarterly reports as directed by the Oneida Business Committee.

(p) *Executive Session*. This section of the agenda shall be used to discuss matters that require confidentiality and meet the requirements set forth in the Open Records and Open Meetings Law for limitations upon access and exceptions. This section of the agenda may be organized to meet the needs of the Oneida Business Committee.

117.7-2. *Requests to Present Agenda Items*. In general, the following individuals are authorized to present items on the agenda of the Oneida Business Committee.

(a) *Oneida Business Committee Members*. Each member of the Oneida Business Committee is authorized to present items to be placed on the agenda for discussion and/or action.

(b) *Chairpersons of Boards, Committees or Commissions*. Chairpersons, on behalf of boards, committees or commissions, shall be authorized to submit the following to be placed on the agenda:

(1) quarterly reports;

(2) contracts for the board, committee or commission requiring Oneida Business Committee approval; and

(3) any other item that must be placed on the Oneida Business Committee agenda.

(c) *Direct Reports*. Employees who are identified as direct reports to the Oneida Business Committee shall be authorized to submit the following to be placed on the agenda:

(1) quarterly reports;

(2) contracts of the entity requiring Oneida Business Committee approval; and

(3) requests for actions under the section of the agenda containing new business as described in section 117.7-1(l).

(d) *Corporations*. All chairpersons, presidents, agents or other authorized representatives of a corporation shall be authorized to submit reports of the corporation and other items on the agenda on behalf of the corporation, as directed by the corporate charter, operating agreement or other governing document.

**117.8. Responsibilities of Oneida Business Committee Meeting Attendees**

117.8-1. *Behavior of Oneida Business Committee Meeting Attendees.* Keeping in line with the Oneida principle of Kalihwi=y%, all attendees including the Oneida Business Committee members are expected to treat each other with respect and kindness. Attendees shall not:

- (a) Use profanity, interrupt others, heckle or threaten people, disrespect property or exhibit behavior that disrupts the meeting or endangers the safety of other attendees;
- (b) Be under the influence of alcohol or illegal drugs;
- (c) Have a weapon on their person while on any public property of the Nation or at any event sponsored by the Nation; and
- (d) Take action that violates any laws, rules or policies of the Nation.

117.8-2. *Recording and Photographing.* Any Oneida Business Committee meeting attendee may photograph, tape-record, or otherwise reproduce any part of a meeting required to be open as long as the device:

- (a) Is operated openly so that it is obvious to those in attendance that the meeting is being recorded;
- (b) Does not create an excessive noise or light that disturbs any individual attending the meeting; and
- (c) Does not otherwise interfere with an individual's observation or participation in the meeting.

**117.9. Removal of a Disorderly or Disruptive Person**

117.9-1. *Sergeant-at-Arms.* The presiding Chairperson may designate an individual to serve as the sergeant-at-arms for Oneida Business Committee meetings. The sergeant-at-arms shall oversee the security of the meeting and ensure the safety of all present.

117.9-2. *Removal of a Disorderly or Disruptive Person.* If a meeting is willfully interrupted by a person and the meeting cannot proceed forward or the person violates section 117.8-1 regarding behavior of Oneida Business Committee attendees and/or section 117.5-1 regarding the discussion of individuals, the Oneida Business Committee shall decide if the individual shall be removed from the meeting. The Oneida Business Committee's decision to remove a person shall be final and not appealable. At the decision of the Oneida Business Committee the presiding Chairperson shall order the sergeant-at-arms to remove the person from the meeting. No person shall be removed from a meeting except for an actual breach of the peace committed at the meeting. An individual removed from an Oneida Business Committee meeting shall not be allowed to return for the duration of the meeting.

117.9-3. *Emergency Removal of a Disorderly or Disruptive Person.* If the disorderly or disruptive behavior of an individual results in an immediate danger to the health and safety of any Oneida Business Committee meeting attendee the presiding Chairperson may take immediate action to remove the disorderly or disruptive person.

117.9-4. *Banning a Disorderly or Disruptive Person.* The Oneida Business Committee may permanently ban a person from attending Oneida Business Committee meetings for any of the following:

- (a) A person is repeatedly removed from Oneida Business Committee meetings for disorderly or disruptive behavior; or
- (b) The behavior of a person reaches such a severe level that an automatic ban from attending Oneida Business Committee meetings is necessary for the protection of the health and safety of all other Oneida Business Committee meeting attendees.

**117.10. Enforcement**

117.10-1. This law shall be enforced according to Robert’s Rules of Order.

117.10-2. *Enforcement by the Oneida Business Committee Chairperson.* At the decision of the Oneida Business Committee the presiding Chairperson shall order the sergeant-at-arms to remove any disorderly or disruptive person from the meeting.

117.10-3. *Enforcement by an Oneida Business Committee Officer or Member.* Officers and members of the Oneida Business Committee are authorized, under Robert’s Rules of Order, to request a point of order to direct compliance with Robert’s Rules of Order, requirements set forth in this law or requirements set forth in resolutions or standard operating procedures adopted by the Oneida Business Committee.

*End.*

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Adopted - BC-



**LEGISLATIVE OPERATING COMMITTEE  
PUBLIC MEETING**

**Oneida Business Committee Meetings Law**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
May 18, 2017 12:15 p.m.

**Present:** Tehassi Hill, David P. Jordan, Jennifer Webster, Candice Skenandore, Clorissa Santiago, Danelle Wilson, Matthew Denny, Leyne Orosco, Ed Delgado, Barbara Cornelius.

**Tehassi Hill:** Greetings. The time is 12:15 p.m. and today's date is Thursday May 18, 2017. I will now call the public meeting for the Oneida Business Committee Meetings Law to order.

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. At the back of the room there is a new public meeting comment form the LOC is testing out. The form is not required to be used, but is there to be used as a tool when formulating public comments. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Thursday May 25, 2017.

In attendance from the LOC is myself, Tehassi Hill, and councilmembers David Jordan and Jennifer Webster.

We will begin today's public meeting for the Oneida Business Committee Meetings law. This is a proposal to create a new Oneida Business Committee Meetings law which would set parameters for OBC meetings regarding:

- The discussion of individuals;
- Public comments;
- Annual OBC scheduling and reporting schedule;
- The OBC agenda;
- Requests to present agenda items;
- Appointment of a sergeant-at-arms;
- Conduct of OBC meeting attendees and audio or video recording;
- Removal of disorderly or disruptive persons;
- Enforcement of this law.

The LOC may impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons.

A good mind. A good heart. A strong fire.

Do we have anybody whose, Ed, you will first up to make comments. I'll start the timer when you start speaking.

**Ed Delgado:** I've had my eye on this little thing for quite some time. On the plus side, you do call people who are coming to speak at BC meetings attendees, and we are attendees when we are there, its just you're correct there. I just wish you would think about revising your GTC meeting rules because on that resolution you called the General Tribal Council attendees, and that's incorrect.

But my comment on this, umm, you make, you're proposing that just during the beginning of the meeting General Tribal Council, I mean attendees can make comments. And then you gotta be pretty much, you're done, if you're not a member of on the agenda, or anything like, you're done making comments. And then for the rest of the meeting it sounds to me that if you want to stay, you're just listen to, you know you'd be like the peanut gallery. You're there to listen only. And that might work in some other smaller, I mean bigger cities or big nations or big states, but I don't think it works for a small tribe. Even though we are a big tribe, when it comes to something like this we are, we have a small population. And not everyone has the time or the energy to come up and make comments, or be familiar with what's going on within their tribe. Most people who do decide to come, they, they're interested in the presentations given by the many programs. And after they, the way I read it, when somebody provides a report the membership in attendance, they'd be done already because the public comment area time is done. So you'd have to sit there for the rest of the meeting with your mouth quiet. And as it is, as it is the tribal membership gets very little say and provides very little comment in the legislative process and this will diminish that. I think the Business Committee should be encouraging public comment. Respectful, you got that in here, that's very good. But to discourage public comment after a report is given, umm or during a report, or. What we have now, umm I think that's a good thing. It provides the tribe, the Nation, with an opportunity to provide comment on the programs that we fund and that's important. And other than that its pretty much okay. But I think you're going to run into a roadblock if you try and promote this thing that whereby you have to come and speak when you got your public comment time but you haven't heard the reports yet. Uhh and you'd have to sit through the, I don't know, it just, I just do not think its gonna fly. So thank you.

**Tehassi Hill:** Thank you for your comments Ed. Does anyone else wish to speak on the Business Committee Meetings law?

**Barbara Cornelius:** Hi, I'm Barbara Cornelius, enrollment number 753. I just think we're creating too, way too many laws. I don't know if we need a law for the Business Committee meetings or should it just be a policy. And that's true with a lot of stuff I see coming up. We're creating too many laws, and the laws really that I see and how they're written really should be policy because once you do that law, its hard to one, usually its hard to change that law, and two, it's a little easier to say you give yourself more flexibility when you put it into policy. Because then in the policy you can change and do what you need to do when situations might change and stuff. But it just seems like the tribe is getting way too law oriented. And so I don't know if the Business Committee meeting has to have law. That's just my thoughts.

**Tehassi Hill:** Alright thank you for your comments. Is there anyone else who wishes to speak on the Business Committee Meetings law? Should we give it a little more time and wait, or its uhh 12:23? We'll give it a couple more minutes. Alright with there being no more speakers registered, the public meeting for the Oneida Business Committee Meetings law is now closed at 12:25 p.m. Written comments may be submitted until close of business on Thursday May 25, 2017.

**-End of Meeting-**



TO: Lisa Summers, Tribal Secretary

FROM: Bonnie Pigman (#5361)

DATE: May 24, 2017

RE: Public Meeting Comment – Oneida Business Committee Meetings Law

For the record I am not opposed to the purpose of this law, but I strongly, oppose the Oneida Business Committee being able to adopt it or being able to amend anything in it. I feel the Oneida Business Committee should not be creating a law for their benefit and then be able to adopt or amend it, stating legislatively the GTC has given them this authority. I feel GTC gave the Oneida Business Committee authority to create and approve laws, but not laws that are developed for their (OBC) benefit, under the guise it's for the benefit of the membership. GTC is their supervisor and therefore, should approve any laws the OBC wishes to create to help them do their job. Allowing the Oneida Business Committee to adopt this law would be like someone being able to be their own judge, jury and carry out their own sentencing. I recommend line 29 be re-written as:

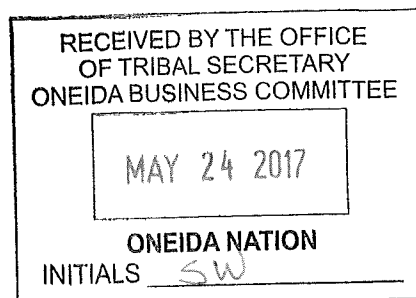
117.2-2 this law may only be amended or repealed by the General Tribal Council...

In section 117.5-2. *Public Comment*. Sub-section (b) states the time limitation may be extended by request of the individual with approval of the OBC. The sub-section does not state when an individual can do this or the manner by which to make the request. I think three (3) minutes to make comment per agenda item is not sufficient and depending on some of the more controversial subjects the entity holding the public meeting should recognize this prior to the public meeting and adjust the public comment time limits according. I think not doing so is disrespectful to those individuals who made time to come and share their thoughts on the subject matter (per 117.5-1....there is a need for frank and honest discussions in all meeting of the OBC))

In section 117.8-1. *Behavior of Oneida Business Committee Attendees*. It identifies that the OBC members are included as attendees, so I am requesting letter (d) be added to state "when OBC members are arguing with each other, non-OBC members (attendees) be able to request the remaining OBC body, regardless of title, to immediately notice the offending OBC members and remind them of the consequences for their inappropriate behavior". There have too many times that I as an attendee have sat in OBC sessions and witnessed the inappropriate behaviors between OBC members. The behaviors of the OBC to, need to be addressed.

In section 117.9 I feel it should be stated "in the event the OBC would lose quorum as a result of OBC members being removed, the OBC meeting will continue until the next scheduled break. This way tribal business can still get accomplished.

One question: Might it be possible an OBC member gets permanently banned, since they too are defined as an attendee?





## Legislative Operating Committee June 7, 2017

# Workplace Violence

<b>Submission Date:</b> 12/18/12	<b>Public Meeting:</b> 5/18/17
<b>LOC Sponsor:</b> Tehassi Hill	<b>Emergency Enacted:</b> n/a <b>Expires:</b> n/a

**Summary:** *This item was originally submitted to the LOC on December 18, 2012 and carried over into the current term by the LOC. The proposed Policy provides guidance to Tribal employees to maintain an environment at and within the Tribe's property and events that is free of violence and the threat of violence.*

**9/17/14 LOC:** Motion by Fawn Billie to not add Workplace Violence Policy to the Active Files List, and to provide notice to the Oneida Business Committee. Motion withdrawn.

Motion by Tehassi Hill to add the Workplace Violence Policy to the Active Files List with Tehassi Hill as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

**11/23/15:** *Work meeting held.* Attendees include: Geraldine Danforth, Matthew J. Denny, Bob Keck, James Bittorf, Kaylynn Gresham, Robert Fresen, Eric Boulanger, Douglass McIntyre.

**1/22/16:** *Work meeting held.* Attendees include: Matthew J. Denny, James Bittorf, Kaylynn Gresham, Robert Fresen, Richard VanBoxtel, Jennifer Webster, Douglass McIntyre.

**3/2/16 LOC:** Motion by Jennifer Webster to accept the draft of the Workplace Violence Policy and forward to the Legislative Reference Office for a legislative analysis; seconded by Tehassi Hill. Motion carried unanimously.

**8/12/16:** *Work meeting held.* Tehassi Hill, Geraldine Danforth, Matt Denny, Jim Bittorf, Jen Falck. Group decided to ask Terry Hetzel to run the current draft through a "table top" exercise with other HRD staff. After that happens, Matt will contact Jen Falck to schedule another work meeting. At that meeting- we will learn what happened at the table top and decide on how to move forward.

**10/10/16:** *Quarterly Sponsor Update Meeting held.* Present: Tehassi Hill, Maureen Perkins, Tani Thurner, Clorissa Santiago, Krystal John.

**3/20/17:** *Work meeting held.* Attendees include: Jennifer Webster, Jennifer Falck, Clorissa Santiago, Maureen Perkins, Geraldine Danforth, Matthew J. Denny, and Kaylynn Gresham. Drafter will update draft to reflect changes made during meeting, and schedule another work meeting.

**4/10/17:** *Work meeting held.* Attendees include: Tehassi Hill, Jennifer Webster, David P. Jordan, Jennifer Falck, Clorissa Santiago, Maureen Perkins, Danelle Wilson, Geraldine Danforth, Matthew J. Denny, Richard VanBoxtel, Kaylynn Gresham, and Jeffrey M. Mears. Drafter will update draft, send draft for review by email to meeting attendees, and begin preparing a public meeting packet.

**4/19/17 LOC:** Motion by Jennifer Webster to approve the public meeting packet and to forward the Workplace Violence law to a public meeting to be held on May 18, 2017; seconded by Tehassi Hill. Motion carried unanimously.

Motion by Tehassi Hill to forward the Workplace Violence law to the Finance Department for a fiscal analysis due to the Legislative Reference Office by May 17, 2017; seconded by Jennifer Webster. Motion carried unanimously.

**Next Steps:**

- Accept the public meeting comments; and
  - Review and consider comments during the 6/7/17 LOC meeting; or
  - Defer the review and consideration of the public meeting comments to a work meeting.



## HANDOUT

TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney  
DATE: June 7, 2017  
RE: Workplace Violence Law: Public Meeting Comment Review

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On May 18, 2017, a public meeting was held regarding the proposed Workplace Violence law. This memorandum is submitted as a review of the oral and written comments received within the public meeting and public comment period. The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

### Comments 1 through 2 – General Comments Regarding Prevention:

**Rae M. Skenandore (written):** I would like to emphasize the comment on the lack of preventative planning.

SHRM has excellent resources that should be considered in the development of this policy/law. At a minimum, some consideration should be given for industry standard definitions.

<https://www.shrm.org/ResourcesAndTools/tools-and-samples/policies/Documents/WVPI%20ST.pdf>

**Robert Keck – Risk Management (written):** The law as proposed provides for steps and/or processes addressing real or alleged incidents of workplace violence. It does not include anything from a Nation-wide perspective of prevention, such as a threatening customer, a domestic dispute spilling into the workplace, immediate alarm/notification steps for employees such as Reception. In my opinion, those measures should be requirements in the law (ex: training as appropriate) and should be implemented;

### *Response*

The Law focuses on how instances of workplace violence or potential instances of workplace violence should be handled. The adoption of the Law does not negate the necessity for preventative action and planning.

The following revision is recommended for clarification purposes:

#### **223.1. Purpose and Policy**

223.1-1. *Purpose.* The purpose of this law is to provide all Oneida Nation employees and visitors an environment that is free of violence and the threat of violence.

223.1-2. *Policy.* It is the policy of the Nation to provide a safe and secure environment for employees to work and for conducting business by establishing the procedures by which instances of workplace violence shall be addressed.

The LOC may address this comment in the following manner:

1. The LOC may consider if the recommended revision in the response should be included in the Law.
2. The LOC may consider whether the Law should include a focus on preventative planning and methods.

### ***LOC Consideration***

## **Comments 3 through 6 – Applicability of Law:**

### **223.4. Applicability**

**223.4-1. This law applies to all employees in any of the Nation’s workplaces, whether or not the employee is operating within the course of his or her employment at the time the incident of workplace violence occurs.**

**Wendy M. Alvarez (written):** Good afternoon, I just have a few questions: 223.4 What about Tribal entities? Radisson or Thornberry, does this count? Oneida Nation employees do not work there.

### ***Response***

The Law defines workplace as “*all of the Nation’s facilities, job sites, and any location where an employee represents the Nation, including over-the-road travel in the Nation’s owned or rented vehicles and circumstances where the employee is being reimbursed for expenses.*”

According to the definition all facilities, job sites and locations owned by the Nation where an employee represents the Nation would constitute a workplace of the Nation, so this would include tribal enterprises such as the Radisson hotel or Thornberry Creek. The Workplace Violence law would only apply to employees of the Nation representing the Nation in those facilities of a tribal enterprise, and not employees of the tribal enterprise that are not employees of the Nation.

The LOC can consider whether tribal entities such as the Radisson or Thornberry should be included under the applicability of this Law.

### ***LOC Consideration***

**Rae M. Skenandore (written):** We think of just protecting employees, but the law should include others such as customers, clients, and business associates.

### ***Response***

The Law states that workplace violence means any intentional act committed by an employee in a workplace that inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person, or damage to property. *[see Workplace Violence law section 223.3-1(k)]*. The Law then goes on to list examples of behaviors that constitute workplace violence in section 223.5. The Law does not specify that the act of workplace violence has to occur against another employee. If an employee's behavior inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm, or damage to property against a customer, client, or business associate then the employee has still violated this Law.

Discussion occurred during the various work meetings regarding if the Law should apply to those individuals such as customers, clients, meeting attendees, and business associates, and therefore they could be found to have committed acts of workplace violence. The inclusion of individuals not employed by the Nation in the applicability of the Law was not pursued because the Nation would have no mechanism to enforce this Law against customers, clients, or business associates. Additionally, this Law governs how instances of workplace violence will be addressed from a personnel standpoint within the employment structure of the Nation., so any act or threat of violence by a customer, client, or business associate would be handled through investigative methods of local law enforcement agencies.

There is no recommended revision based on this comment. The LOC may consider if customers, clients, and business associates should be further included in the Law.

### ***LOC Consideration***

**Barbara Cornelius (oral):** My concern is that your first bullet, where it says it applies to all employees of the Nation in any workplace of the Nation, whether or not the employee is operating within the course of his or her employment. So are we trying to control the employees at GTC? Is that what we are trying to do?

So if we're trying to go and curtail what happens at GTC, I think it's very inappropriate but it's also inappropriate because, I don't know who you got your guidance from, but you can't tell people what they can do when they are not working for you

### ***Response***

The Law was not intended to serve as a mechanism to control the behavior of employees at General Tribal Council meetings. The Nation is currently developing a law governing General Tribal Council meetings which will detail expectations for how the meetings will be held, and the behavior expectations for those individuals in attendance. The intent of the Law is to provide employees of the Nation an environment that is free of violence and the threat of violence by establishing a process to address incidents of workplace violence.

There is no recommended revision based on this comment. The LOC may consider whether the Law should apply to employees of the Nation when they are in attending Oneida General Tribal Council meetings.

### ***LOC Consideration***

**Barbara Cornelius (oral):** Because it seems to me, having a HRD background, you're overstepping the boundaries of employer vs the employee, as if you are an employee all the time. The only ones that would be employees all the time would be your exempt employees. So that would be management, the Business Committee, those types of individuals. But your hourly employee, once they get off the clock, they should no longer be held to the workplace violence standard, because they are no longer your employee. You are an individual citizen.

Whether they are at a function or not, you can't tell them how to act if they are not working for you. Now if they are working for you, then that's another thing and there might be a group of individual employees that you might be able to do this to like maybe your police officers, your lawyers, your top level officials--you can say hey, you have to act appropriately because no matter where you are at, they know you are an Oneida official. But just your regular cashier, loan officers, just your regular everyday employee I don't think you can make that as part of that law. So you are either going to have to exempt them from law or at least research, if you don't believe me, research it so that you know that I think you're overstepping the boundaries of that workplace violence law. And then the other one is, that's all I had was just that one, where I think you're overstepping your authority when you say no matter where they are at, if they are on the clock or not, they can be called to task for their behavior. Thank you.

### ***Response***

The LOC has made the policy determination that every employee, no matter what position they hold within the Nation, represents the values and standards of the Nation. For that reason the LOC determined that all employees should be held to the highest standards, and that violence of any nature cannot be tolerated. Whenever an employee of the Nation is in a workplace of the



Nation, even if it is not their particular workplace, they are serving as a representative and extension of the Nation's values, and it is for that reason they will be held accountable for their actions under this Law.

### *LOC Consideration*

#### **Comment 7 – General Comment Regarding Term “Designee”:**

**Rae M. Skenandore (written):** Anywhere it's "or designee", there should be a training requirement for that person serving in that designee capacity.

### *Response*

The use of the term “or designee” is used in the law to reference that the Equal Employment Opportunity (EEO) Department Director, or an individual assigned as a designee by the EEO Department Director, shall be responsible for investigating alleged instances of workplace violence. *[see Workplace Violence law section 223.9-1]*. Currently, the law leaves the decision to assign a designee, or whom that designee might be, up to the discretion of the EEO Department Director.

The LOC may consider whether flexibility and discretion should be left to the EEO Department Director to appoint a designee that is qualified and trained to take over the investigative duties, or if a training requirement should be included in the Law for that individual assigned to be the designee for the EEO Department Director.

### *LOC Consideration*

#### **Comments 8 through 11 – Prohibited Behavior:**

### **223.5. Prohibited Behavior**

**223.5-1. *Prohibited Behaviors.*** Examples of workplace violence include, but are not limited to, the following prohibited behaviors:

- (a) intentionally causing physical injury to another person;
- (b) hitting or shoving;
- (c) fighting or "horseplay" that may be dangerous to others;
- (d) direct threats or physical intimidation;
- (e) implications or suggestions of violence;
- (f) stalking;

- (g) possession or use of weapons of any kind on property of the Nation, including parking lots, other exterior premises or while engaged in activities for the Nation;
- (h) physical restraint, confinement;
- (i) loud, disruptive or angry behavior or abusive language;
- (j) sending of threatening, harassing or abusive e-mails, faxes, phone calls, text messages or other form of electronic media;
- (k) using the workplace to violate protective orders;
- (l) intentionally damaging property of the Nation or property of another;
- (m) any other act that a reasonable person would perceive as constituting a threat of violence;
- (n) throwing an object at an individual; and
- (o) any threat or act of violence that is a direct result of the victim's employment duties or responsibilities with the Nation.

(i) loud, disruptive or angry behavior or abusive language;

**Rae M. Skenandore (written):** Prohibited Behavior I- loud- So, if I shout BINGO! Can I be written up? This possibly needs some more descriptive language.

### *Response*

If an employee is engaging in loud, disruptive, or angry behavior or abusive language then that behavior may constitute workplace violence. The purpose of this section is to illustrate examples of workplace violence so that an employee of the Nation can be aware of what standards the employee's behavior will be held to. Not every instance an employee is loud will result in an alleged act of workplace violence, or will be considered workplace violence. This section illustrates that loud, disruptive, angry or abusive language can be determined to constitute workplace violence in some situations. This Law holds employees of the Nation to the highest of standards.

The following revision is recommended to clarify this subsection:

- (i) loud, disruptive, ~~or angry~~ or abusive language or behavior ~~or abusive language~~;

The LOC can consider whether to include the recommended revision provided in the response. The LOC can also consider whether more descriptive language should be used in this section.

### *LOC Consideration*

(j) sending of threatening, harassing or abusive e-mails, faxes, phone calls, text messages or other form of electronic media;

**Rae M. Skenandore (written):** Prohibited Behavior J- Would it be more helpful to say written or verbal...

### ***Response***

The commenter suggests using the phrase “written or verbal.” The language used in section 223.5-1(j) demonstrates the various forms of communication that could be considered threatening or harassing. This provides more information and clarity to the reader of the Law so they are aware of the standard for workplace violence all employees of the Nation will be held to.

There is no recommended revision based on this comment, but the following revision is recommended to provide for more clarity.

(j) sending of threatening, harassing or abusive e-mails, letters, faxes, phone calls, text messages or other form of electronic media;

The LOC can consider whether or not to include the recommended revision from the response.

### ***LOC Consideration***

## **(n) throwing an object at an individual; and**

**Rae M. Skenandore (written):** Prohibited Behavior N- should be more descriptive. Example is throwing a piece of paper.

### ***Response***

The commenter states that this subsection should be more descriptive because throwing a piece of paper could constitute workplace violence under this subsection. The purpose of this section is to illustrate examples of workplace violence so that an employee of the Nation can be aware of what standards the employee’s behavior will be held to. This Law holds employees of the Nation to the highest standards. Throwing an object at an individual was included because it was determined that this behavior should be prohibited because it does constitute workplace violence. The LOC determined that there is no circumstance in which an employee of the Nation should throw any object at another individual.

There is no recommended revision based on this comment. The LOC can consider whether this section should be revised.

### ***LOC Consideration***

**(o) any threat or act of violence that is a direct result of the victim's employment duties or responsibilities with the Nation.**

**Rae M. Skenandore (written):** Prohibited Behavior O- I have no idea what this is supposed to mean. It does not make any sense.

### ***Response***

Section 223.5-1(o) was included to serve as a catch-all provision for any threat or act of violence that occurs as a direct result of any duty and/or responsibility of the victim, whether or not this threat or act of violence occurs in a workplace of the Nation.

There is no recommended revision based on this comment. The LOC can consider whether this section needs clarification.

### ***LOC Consideration***

## **Comment 12 – Reporting Workplace Violence and Future Workplace Violence:**

**Robert Keck – Risk Management (written):** 223.6 and 223.7 -I don't really see a difference between current and future workplace violence WV. WV is WV;

### ***Response***

The commenter states that there should be no differentiation between current and future workplace violence. Section 223.6 of the Law discusses the requirements for reporting workplace violence, while section 223.7 of the Law discusses how potential instances of workplace violence should be handled. The difference between these two sections is that if there has been an *actual occurrence* of workplace violence that the supervisor should be made aware, or if there is the *potential* for a workplace violence incident.

It is recommended that sections 223.7-2 be moved to section 223.6 of the Law, because the subsection discusses obtaining a restraining order against another employee. Although it is possible that the restraining order is not related to a workplace violence incident, obtaining a restraining order is an actual event that should be reported, so it would be placed better in section 223.6 as follows:

## 223.6. Reporting Workplace Violence

223.6-1. *Reporting by a Non-Employee.* Any non-employee is encouraged to report threats of or observed workplace violence that occurs in the Nation's facilities and workplaces. A report of workplace violence given to an employee from a non-employee shall be promptly reported in writing to the employee's supervisor. The supervisor shall perform the initial assessment of the information pursuant to section 223.8.

223.6-2. *Permissive Reporting by an Employee.* An employee may report workplace violence to his or her supervisor where the employee:

- (a) is the victim of workplace violence; or
- (b) believes he or she has been threatened with workplace violence.

223.6-3. *Mandatory Reporting by an Employee.* An employee shall report workplace violence where the employee witnesses an act or threat of workplace violence towards anyone else.

(a) *Emergency Situation.* If an emergency exists or the situation is one of immediate danger to the life and safety of a person, the employee shall, if possible without causing themselves to be in danger, contact the Oneida Police Department or local law enforcement, and facility security if determined appropriate, and take whatever emergency steps are available and appropriate to protect himself or herself from immediate harm.

(b) *Non-Emergency Situation.* If a non-emergency situation exists the employee shall report the incident in writing to the appropriate supervisor as soon as possible if the situation is not one of immediate danger to life and safety. If the incident involves the supervisor, the employee shall report the incident to the supervisor's supervisor, or if none exists to the area manager.

223.6-4. *Reporting Restraining Orders.* An employee who has or obtains a current restraining order against another employee, shall immediately supply a copy of the signed order to his or her supervisor.

(a) The supervisor shall provide copies to the area manager and the EEO Department Director or designee.

Additionally, upon further review it is determined that section 223.7-3 of the Law, which discusses anonymous threats or letters does not make mention of the Nation's Anonymous Letters Policy, so the following revision is recommended:

223.7-3. *Anonymous threats or letters.* In the event that an employee receives anonymous threats or letters, the employee shall immediately forward a summary of such information in a confidential manner to the Chief of the Oneida Police Department in accordance with the Nation's laws, policies and rules governing anonymous letters. The employee shall then immediately notify his or her supervisor. The supervisor shall notify the target of the threat, take measures to ensure safety, and ensure that ~~notify the~~ Oneida Police Department was notified, and ~~notify~~ ~~or~~ local law enforcement and facility security if determined appropriate.

The LOC may consider whether the recommended revisions should be included in the Law.

### LOC Consideration

### Comments 13 through 16 – Qualifications of Supervisors:

#### 223.6. Reporting Workplace Violence

**223.6-1. *Reporting by a Non-Employee.*** Any non-employee is encouraged to report threats of or observed workplace violence that occurs in the Nation's facilities and workplaces. A report of workplace violence given to an employee from a non-employee shall be promptly reported in writing to the employee's supervisor. The supervisor shall perform the initial assessment of the information pursuant to section 223.8.

**Robert Keck – Risk Management (written):** 223.6-1. Supervisor perform an initial assessment. Supervisors should be trained to conduct this type of assessment to be qualified to do so. It would seem more reasonable to get the information in the hands of qualified people such as EEO (if qualified) or OPD;

#### 223.8. Supervisor Responsibilities

**223.8-1.** Upon receiving a report of workplace violence or otherwise becoming aware of a threat of workplace violence or a workplace violence episode, a supervisor shall immediately conduct an assessment of the situation and determine if an emergency exists or if the situation is one of immediate danger.

**Robert Keck – Risk Management (written):** 223.8-1 Same comment as made for 223.6-1 above;

#### 223.8. Supervisor Responsibilities

**223.8-3. *Non-Emergency Situation.*** If the situation is not creating immediate danger to life and safety, the supervisor shall speak to the person reporting the incident and assess the situation.

(a) If the supervisor deems the episode is not a workplace violence problem then the investigation as a workplace violence matter ends.

(b) Where the supervisor deems the episode as a workplace violence matter, he or she shall prepare a written Workplace Violence Incident Report detailing the complaint. The supervisor shall then forward this report to the EEO Department Director or designee.

**Robert Keck – Risk Management (written):** 223.8-3 Again, Supervisors assessing. Will a Supervisor be qualified and will they be objective?;

**Robert Keck – Risk Management (written):** It would seem that real or alleged incidents of WV would be better addressed with immediate, objective assessment/investigation by trained, qualified personnel. After that, responsibility could be pushed down to Supervisory level. My opinion.

## Response

The commenter states that the if the supervisor is to be conducting an initial investigation then the supervisor should have training and be qualified to do so, or the EEO Department or Oneida Police Department should be conducting the initial investigation.

The intent of the Law is to have the supervisor screen non-emergency situations that may be instances of workplace violence and need further investigation by the EEO Department Director. The Law states a definition for workplace violence in section 223.3-1(k) and lists examples of prohibited behaviors that may constitute workplace violence in 223.5-1 that may be used as guidelines for the supervisor to follow when making the decision in the incident meets the qualifications of workplace violence. If when the supervisor is notified of the workplace violence incident it is an emergency situation, the supervisor will contact the Oneida Police Department or local law enforcement, and facility security if appropriate and available. Additionally, when an incident meets the qualifications of workplace violence, the supervisor informs the EEO Department Director so an investigation may begin.

The Law is currently unclear if a supervisor is alerted to the workplace violence incident in emergency situations, so the following revision is recommended for clarification purposes:

**223.6-3. Mandatory Reporting by an Employee.** An employee shall report workplace violence where the employee witnesses an act or threat of workplace violence towards anyone else.

(a) *Emergency Situation.* If an emergency exists or the situation is one of immediate danger to the life and safety of a person, the employee shall, if possible without causing themselves to be in danger, contact the Oneida Police Department or local law enforcement, and facility security if determined appropriate, and take whatever emergency steps are available and appropriate to protect himself or herself from immediate harm. The employee shall report the incident in writing to the appropriate supervisor as soon as possible.

(b) *Non-Emergency Situation.* If a non-emergency situation exists the employee shall report the incident in writing to the appropriate supervisor as soon as possible if the situation is not one of immediate danger to life and safety. ~~If the incident involves the supervisor, the employee shall report the incident to the supervisor's supervisor, or if none exists to the area manager.~~

**223.6-4. Reporting the Behavior of a Supervisor.** If the incident of alleged workplace violence involves the supervisor, the employee shall report the incident to the supervisor's supervisor, or if none exists to the area manager.

The LOC may consider the comment in the following ways:

1. The LOC may consider if the recommended revision should be included in the Law.
2. The LOC may consider whether the supervisor should be the individual conducting the initial investigation to determine if a workplace violence incident occurred, or if the Law should be amended so that the EEO Department Director or OPD should be conducting the initial investigation.



### *LOC Consideration*

#### **Comment 17 –Mandatory Reporting by an Employee:**

**223.6-3. Mandatory Reporting by an Employee.** An employee shall report workplace violence where the employee witnesses an act or threat of workplace violence towards anyone else.

(a) **Emergency Situation.** If an emergency exists or the situation is one of immediate danger to the life and safety of a person, the employee shall, if possible without causing themselves to be in danger, contact the Oneida Police Department or local law enforcement, and facility security if determined appropriate, and take whatever emergency steps are available and appropriate to protect himself or herself from immediate harm.

(b) **Non-Emergency Situation.** If a non-emergency situation exists the employee shall report the incident in writing to the appropriate supervisor as soon as possible if the situation is not one of immediate danger to life and safety. If the incident involves the supervisor, the employee shall report the incident to the supervisor's supervisor, or if none exists to the area manager.

**Robert Keck – Risk Management (written):** 223.6-3 Mandatory?;

#### *Response*

Currently, the Law has a mandatory requirement that any employee that witnesses an act or threat of workplace violence towards any other person must report the workplace violence.

There is no recommended revision based on this comment. The LOC may consider whether the mandatory reporting requirement should remain as it is stated in the Law.

### *LOC Consideration*

#### **Comment 18 – General Comment about the Application of the Law:**

**Rae M. Skenandore (written):** Not everything is going to be victim specific. Who files a report if someone is just shouting at a room of people? Or in the reception area of a building?

### ***Response***

The Law requires an employee to report workplace violence in all instances where the employee witnesses an act or threat of workplace violence towards another person. [see *Workplace Violence law section 223.6-3*]. The requirement to report the perceived instance of workplace violence still could apply if that violence is not directed at a specific individual and instead is directed at a room filled with people or the reception area of a building.

There is no recommended revision based on this comment. The LOC may consider if this comment needs more consideration.

### ***LOC Consideration***

#### **Comment 19 – Future Workplace Violence:**

#### **223.7. Future Workplace Violence**

**223.7-1. Where an employee has reason to believe that he, she or others, may be victimized sometime in the future, either at the workplace or as a direct result of their employment with the Nation, he or she is encouraged to provide this information in writing to his or her supervisor or the EEO Department Director or designee for an initial assessment pursuant to section 223.8-1.**

**(a) If an employee reports a possibility of future workplace violence to his or her supervisor the supervisor shall inform the EEO Department Director or designee.**

**(b) The EEO Department Director or designee shall inform the Oneida Police Department or local law enforcement and/or facility security if determined appropriate.**

**Robert Keck – Risk Management (written):** 223.7-1.Report to supervisor or EEO- it should be one or the other so it is clear to employees;

### ***Response***

The following revision is recommended to provide clarity:

#### **223.7. Future Workplace Violence**

**223.7-1. Where an employee has reason to believe that he, she or others, may be victimized sometime in the future, either at the workplace or as a direct result of their employment with the Nation, he or she is encouraged to provide this information in writing to his or her ~~supervisor or the EEO Department Director or designee~~ for an initial assessment pursuant to section 223.8-1.**

**(c) If an employee reports a possibility of future workplace violence to his or her supervisor the supervisor shall inform the EEO Department Director or designee.**

**(d) The EEO Department Director or designee shall inform the Oneida Police**

Department or local law enforcement and/or facility security if determined appropriate.

The LOC may consider if the recommended revision should be included in the Law.

### *LOC Consideration*

## **Comments 20 through 22 – Future Workplace Violence – Restraining Orders:**

### **223.7. Future Workplace Violence**

**223.7-2. Restraining Order.** An employee who has or obtains a current restraining order against another employee, shall immediately supply a copy of the signed order to his or her supervisor or to the EEO Department Director or designee.

(a) The supervisor shall provide copies to the area manager and the EEO Department Director or designee.

**Robert Keck – Risk Management (written):** 223.7-2. Same as above.

### *Response*

The following revision is recommended to provide clarity to the employee regarding who to report to:

### **223.7. Future Workplace Violence**

**223.7-2. Restraining Order.** An employee who has or obtains a current restraining order against another employee, shall immediately supply a copy of the signed order to his or her ~~supervisor or to the EEO Department Director or designee.~~

(a) The supervisor shall provide copies to the area manager and the EEO Department Director or designee.

### *LOC Consideration*

**Robert Keck – Risk Management (written):** 223.7-2. Also, what steps would be taken if a restraining order is given to an employee who works alongside the employee they took the RO out against?;

### *Response*

The Law does not provide detail on what specific steps will be taken if an employee obtains a restraining order against another employee who works alongside the employee who obtained the restraining order. The decision on how that specific situation will be handled will be up to the discretion of the EEO Department Director and the supervisor of the employees.

There is no recommended revision. The LOC may determine if more consideration of this comment is necessary, and if the Law should address a situation when an employee obtains a restraining order against another employee who works alongside the employee who obtained the restraining order.

### ***LOC Consideration***

**Rae M. Skenandore (written):** Line 124 the language is awkward. "who has or obtains a current restraining order' How about If an employee obtains a restraining order against another employee, they shall immediately ..

### ***Response***

The following revision is recommended to provide further clarity:

223.7-2. *Restraining Order.* An employee who ~~has or obtains~~ possesses a current restraining order against another employee, shall immediately supply a copy of the signed order to his or her supervisor or to the EEO Department Director or designee.

The LOC may consider whether the recommended revision from the response should be included in the Law.

### ***LOC Consideration***

## **Comment 23 – Comment Regarding the Responsibility of the Supervisor and the EEO:**

**Rae M. Skenandore (written):** There seems to be a blurring of responsibilities between what a supervisor should do and what EEO does?

### ***Response***

When an alleged incident of workplace violence occurs, both the supervisor of the employee and the EEO Department Director are involved in how the situation is handled, although the Law differentiates between the role of the supervisor and the role of the EEO Department Director.

The responsibilities of the supervisor are contained in section 223.8 of the Law, and include conducting the initial assessment of the alleged workplace violence incident to determine if the EEO Department Director should be notified to begin an investigation, place an employee alleged to be involved in a workplace violence incident on investigative leave, and execute any disciplinary actions that result from a workplace violence incident.

The responsibilities of the EEO Department Director are contained in section 223.9 of Law, and include investigating the alleged workplace violence incident, implement preventative factors, provide a recommendation for disciplinary action, and provide further assistance to employees. The roles of the supervisor and EEO Department Director are meant to work in conjunction with one another.

The LOC may consider whether the differentiation between the roles of the supervisor and EEO Department Director are clear, or if more clarification is needed in the Law.

### *LOC Consideration*

#### **Comment 24 – Supervisor Responsibilities:**

##### **223.8. Supervisor Responsibilities**

**223.8-4. A supervisor may place an employee alleged to be involved in a workplace violence incident on investigative leave in accordance with the Nation’s laws, policies and rules governing investigative leave if the supervisor deems the investigative leave necessary and appropriate, except that an employee involved in an alleged incident of workplace violence shall not be allowed to resign or retire during an investigation or in lieu of a termination.**

**Robert Keck – Risk Management (written):** 223.8-4 Supervisors have authority to put someone on investigative leave?;

### *Response*

The Law states that a supervisor may place an employee alleged to be involved in a workplace violence incident on investigative leave in accordance with the Nation’s laws, policies and rules governing investigative leave. This does not grant the supervisor the sole authority to place an employee on investigative leave. The supervisor will have to follow all guidelines of the current Investigative Leave Policy, such as obtaining prior approval from the Human Resources

Department Manager or his or her designee and their Division Director or if there is no Division Director, the person at the highest level of the chain of command. *[see Investigative Leave Policy section 208.5-1]*.

While reviewing this comment, it was discovered that the Law might conflict with the Investigative Leave Policy because the Investigative Leave Policy requires the employee's supervisor to complete the investigation while the Law has the EEO Department Director completing the investigation. *[see Investigative Leave Policy section 208.7-1]*. The Investigative Leave Policy does appear to allow an individual other than the employee's supervisor to complete the investigation as long as a copy of the written report is provided to the employee's supervisor. *[see Investigative Leave Policy section 208.7-3]*. The following revision is recommended to address the issue:

223.8-4. A supervisor may place an employee alleged to be involved in a workplace violence incident on investigative leave, if the supervisor deems the investigative leave necessary and appropriate, in accordance with the Nation's laws, policies and rules governing investigative leave ~~if the supervisor deems the investigative leave necessary and appropriate~~, except ~~that for~~ the following:

(a) ~~an~~ An employee involved in an alleged incident of workplace violence shall not be allowed to resign or retire during an investigation or in lieu of a termination; ~~and~~.

(b) The EEO Department Director, not the employee's supervisor, shall conduct the investigation of the alleged workplace violence incident.

223.9-3. In performing these investigative duties, the EEO Department Director or designee shall not interfere in the investigation of any law enforcement agencies. If at any time criminal charges are brought against an employee, then the employee shall be placed on investigative leave in accordance with the Nation's laws, policies and rules governing investigative leave, except ~~that for~~ the following:

(a) ~~A~~ An employee involved in an alleged incident of workplace violence shall not be allowed to resign or retire during an investigation or in lieu of a termination; ~~and~~.

(b) The EEO Department Director, not the employee's supervisor, shall conduct the investigation of the alleged workplace violence incident.

223.9-4. Upon completion of the investigation, the EEO Department Director or designee shall:

(b) provide a written report of the investigation and recommendation for disciplinary action, if any, to the supervisor of the employee;

The LOC may consider if the recommended revisions should be included in the Law. The LOC may also consider if the Law address the Investigative Leave Policy properly, or if a conflict between the two laws exist.

### ***LOC Consideration***

**Comments 25 through 27 – Equal Employment Opportunity Department Responsibilities – During the Investigation:**

**223.9. Equal Employment Opportunity Department Responsibilities**

**223.9-1. The EEO Department Director, or an individual assigned as designee by the EEO Department Director, shall be responsible for investigating alleged workplace violence.**

**Robert Keck – Risk Management (written):** 223.9-1 Conflicts with earlier clauses where Supervisors are tasked with investigating

***Response***

The requirement of the EEO Department Director, or a designee, to investigate alleged instances of workplace violence does not conflict with prior requirements of the Law involving a supervisor investigation because the supervisor only does an initial investigation to determine if a potential act of workplace violence occurred. The supervisor is not conducting an investigation into the alleged act of workplace violence, the supervisor is only screening if an incident meets the qualifications of workplace violence and then forwarding that information to the EEO Department Director.

There is no recommended revision based on this comment. The LOC may consider whether more clarification is needed for the roles of the supervisor and EEO Department Director and what investigations each role does.

***LOC Consideration***

**Rae M. Skenandore (written):** What's the protocol for requesting/reviewing video footage if available? It's not listed that it should even be reviewed.

***Response***

The EEO director would have to follow the current policies and procedures for requesting and/or reviewing video footage if necessary and available.

The following revision is recommended to provide clarity:

**223.9. Equal Employment Opportunity Department Responsibilities**

223.9-2. Upon receipt of a completed Workplace Violence Incident Report, or other acceptable written notice of an allegation of workplace violence, the EEO Department Director or designee shall coordinate with all involved agencies or departments and immediately conduct an investigation which may include ~~by performing~~ the following duties:

- (a) Personally visit the scene of an incident as soon as possible;
- (b) Interview employees and other witnesses;



- (c) Examine the workplace for security risk factors associated with the incident, including examination of any reports of inappropriate behavior by the perpetrator;
- (d) Determine the cause of the incident;
- (e) Determine what mitigating action could prevent the incident from recurring;
- (f) Record the findings and recommended mitigating actions; ~~and~~
- (g) Contact the Oneida Police Department and any other appropriate law enforcement agency; ~~and~~
- (h) Review relevant video surveillance footage if available, in accordance with standard operating procedures on the subject; and
- (i) Any other investigative methods necessary for a thorough investigation.

The LOC may consider the following when addressing this comment:

1. If the recommended revision should be included in the Law.
2. Whether a process for requesting and reviewing video surveillance footage should be included in the Law.
3. If the requirement to contact the Oneida Police Department or any other appropriate law enforcement agency should be a mandatory requirement or if there should be some discretion allowed.

### *LOC Consideration*

#### **223.9. Equal Employment Opportunity Department Responsibilities**

- (g) **Contact the Oneida Police Department and any other appropriate law enforcement agency.**

**Rae M. Skenandore (written):** Line 178 reads like a required action. Perhaps it should state, if necessary, contact OPD ...

### *Response*

Currently, the Law requires that the EEO Department Director contact the Oneida Police Department or other law enforcement agency during every investigation of alleged workplace violence. The LOC may consider whether this should be a mandatory requirement. The LOC can address this comment in the following ways:

1. The LOC can make the policy consideration that the Oneida Police Department and any other appropriate law enforcement agency should be contacted during every investigation of workplace violence, and leave the Law as drafted.
2. The LOC can make the policy consideration that there should be more discretion and flexibility included in the Law and make the following revision:

#### **223.9. Equal Employment Opportunity Department Responsibilities**

(g) Contact the Oneida Police Department and or any other appropriate law enforcement agency when necessary;

### *LOC Consideration*

## **Comments 28 through 30 – Equal Employment Opportunity Department Responsibilities - At the Completion of the Investigation:**

### **223.9. Equal Employment Opportunity Department Responsibilities**

**223.9-4. Upon completion of the investigation, the EEO Department Director or designee shall:**

- (a) implement any preventive factors within the Nation's Human Resources Department's authority;
- (b) provide a recommendation for disciplinary action, if any, to the supervisor of the employee;
- (c) notify the Oneida Police Department or local law enforcement when a potential criminal act has occurred;
- (d) refer employees to post-event trauma counseling for those employees desiring such assistance; and
- (e) offer to provide information on filing a restraining order.

### **223.9. Equal Employment Opportunity Department Responsibilities**

**223.9-4. Upon completion of the investigation, the EEO Department Director or designee shall:**

- (c) notify the Oneida Police Department or local law enforcement when a potential criminal act has occurred;

**Rae M. Skenandore (written):** Shouldn't Line 191 include security?

### *Response*

No, security should not be included in the requirement that at the end of an investigation the EEO Department Director must notify the Oneida Police Department or local law enforcement when a potential criminal act has occurred. The intent of this requirement is to inform the proper agencies of the occurrence of a potential criminal act so that those agencies can begin their own investigation if necessary. The inclusion of the Nation's security department is not necessary to serve the intended purpose of this section.

There is no recommended revision based on this comment. The LOC may consider if security should be included in this requirement.

### *LOC Consideration*

#### **223.9. Equal Employment Opportunity Department Responsibilities**

**223.9-4. Upon completion of the investigation, the EEO Department Director or designee shall:**

- (d) refer employees to post-event trauma counseling for those employees desiring such assistance; and

**Rae M. Skenandore (written):** Line 193 should be an automatic offering to employees by the supervisor. Not wait for EEO to be involved.

### *Response*

The Law has the EEO Department Director refer employees to post-event trauma counseling for those employees desiring such assistance due to the fact that it is the EEO Department Director that will have coordinated with all the involved agencies or departments and conducted the investigation. Additionally, since the Law states that the EEO Department Director will be making the referral to post-event trauma counseling, the EEO Department Director must have the knowledge and skills necessary to provide referrals on this topic, while the supervisor of the employee might not have that knowledge of post-event trauma counseling.

There is no recommended revision based on this comment. The LOC may consider if the supervisor of the employee should be the individual to refer employees to post-event trauma counseling and not the EEO Department Director, or if the Law should remain as written.

### *LOC Consideration*

#### **223.9. Equal Employment Opportunity Department Responsibilities**

**223.9-4. Upon completion of the investigation, the EEO Department Director or designee shall:**

- (e) offer to provide information on filing a restraining order.

**Rae M. Skenandore (written):** Is line 195 a standard practice?

### *Response*

The LOC made the policy consideration that the EEO Department Director will be offering this assistance to employees with the adoption of this Law.

There is no recommended revision based on this comment. The LOC may consider if the EEO Director should offer information on filing a restraining order as the Law is currently written, or if more information should be gathered on whether this is a standard practice.

### ***LOC Consideration***

#### **Comments 31 through 32 – Resignation during Investigations:**

#### **223.9. Equal Employment Opportunity Department Responsibilities**

**223.9-6. The Nation shall not accept a resignation from an employee when there is an ongoing investigation or in lieu of a termination.**

**Rae M. Skenandore (written):** Line 196 should be consistent with other related laws. I don't believe it is.

**Robert Keck – Risk Management (written):** 223.8-4 Why can't someone resign when they want to? I doubt that would hold up in any court and could result in an Employment Practices liability claim;

### ***Response***

The commenter is correct that forbidding an individual to resign when there is an ongoing investigation is inconsistent with other laws because the Investigative Leave Policy does allow an employee to resign or retire during an investigation. [see *Investigative Leave Policy* section 208.8-2]. The intent of this provision is to prevent an individual accused of workplace violence from resigning from one position before the investigation is completed and then immediately applying for another position within the Nation. If this provision was included to prevent a potentially violent employee from working within the Nation, or at least rapidly reapplying for employment with the Nation, the following revision is recommended:

#### **223.9. Equal Employment Opportunity Department Responsibilities**

**223.9-6. ~~The Nation shall not accept a resignation from an~~ An employee who resigns from their position when there is an ongoing investigation or in lieu of a termination shall not be eligible for hiring consideration in a different position within the Nation for (#) days from the date of the resignation.**

If this revision is made then other areas in the law, such as section 223.9-1 and 223.11-1 will have to be amended to reflect the revision.

The LOC may consider whether the recommended revision should be included in the Law. If the LOC determines the recommended revision should be included in the Law then the LOC should make a determination for how long an employee shall be prohibited from hiring consideration if they resign during an open workplace violence investigation.

### *LOC Consideration*

### **Comments 33 through 34 – Confidentiality:**

#### **223.11. Confidentiality**

**223.11-1. Information related to the application of this law is strictly confidential. Information shall not be disclosed to third parties unless:**

- (a) the prior written consent of the alleged victim is obtained;
- (b) the release of information is in compliance with a court order; and/or
- (c) the release of information is pursuant to applicable laws and/or policies.

**Rae M. Skenandore (written):** Shouldn't the confidentiality section include what's necessary for the investigation?, OPD, Security?

### *Response*

Section 223.11-1 of the Law discusses confidentiality in terms of the release of information to third parties. Although it might be necessary for the EEO Department Director to notify the Oneida Police Department or other law enforcement agency, or facility during the investigation, the EEO Department Director is not allowed to share confidential information related to the application of this Law unless the qualifications in section 223.11-1(a)-(c) are met.

There is no recommended revision based on this comment. The LOC may consider whether any more information should be included in the Law regarding confidentiality.

### *LOC Consideration*

#### **223.9. Equal Employment Opportunity Department Responsibilities**

**223.9-7. In appropriate circumstances, the EEO Department Director or designee shall inform the reporting individual of the results of the investigation. To the extent possible, the Nation shall maintain the confidentiality of the reporting employee and the**

investigation, however the Nation may need to disclose results in appropriate circumstances; for example, in order to protect individual safety.

**Rae M. Skenandore (written):** Sentence starting on line 199 should go with the confidentiality section.

### *Response*

The following revision is recommended:

### **223.9. Equal Employment Opportunity Department Responsibilities**

223.9-7. In appropriate circumstances, the EEO Department Director or designee shall inform the reporting individual of the results of the investigation which would not compromise the legally-protected confidentiality of any other person. ~~To the extent possible, the Nation shall maintain the confidentiality of the reporting employee and the investigation, however the Nation may need to disclose results in appropriate circumstances; for example, in order to protect individual safety.~~

### **223.11. Confidentiality**

223.11-1. To the extent possible, the Nation shall maintain the confidentiality of the reporting employees and the investigation. ~~However, the Nation may need to disclose results in appropriate circumstances; for example, in order to protect individual safety.~~

223.11-~~1~~<sup>2</sup>. Information related to the application of this law is strictly confidential. Information shall not be disclosed to third parties unless:

- (a) the prior written consent of the alleged victim is obtained;
- (b) the release of information is in compliance with a court order; and/or
- (c) the release of information is pursuant to applicable laws and/or policies.

### *LOC Consideration*

### **Comments 35 through 37 – Enforcement:**

### **223.12. Enforcement**

223.12-2. An individual who receives a criminal conviction resulting from an incident of workplace violence covered by this law, shall be ineligible for future employment until the individual is pardoned by the Nation.

**Wendy M. Alvarez (written):** 223.12-2 Even with a pardon the individual may not be eligible for a Gaming license – does this need to be in here?

**Rae M. Skenandore (written):** Line 222 states "until the individual is pardoned" ... A pardon is not automatic. Shouldn't it read unless, not until.

### ***Response***

The commenters are correct in stating that a pardon by the Nation is not guaranteed, and that even with a pardon of criminal conviction, the individual is not eligible for future employment unless the individual can meet all necessary requirements of employment.

The following revision is recommended:

#### **223.12. Enforcement**

223.12-2. An individual who receives a criminal conviction resulting from an incident of workplace violence covered by this law, shall be ineligible for future employment ~~until~~unless the individual receives a ~~is~~ pardoned by the Nation, and can meet all employment qualifications.

The LOC can consider whether the recommended revision in the response should be included in the Law.

### ***LOC Consideration***

#### **223.12. Enforcement**

**223.12-3. An employee who violates this law may be subject to removal from a workplace of the Nation.**

**Rae M. Skenandore (written):** Enforcement lists removal of the employee from a workplace. Shouldn't that have been an immediate part of the process?

### ***Response***

Removal of an individual from a workplace of the Nation is included in section 223.12-3 of the Law because it is a mechanism for enforcement. It is not an immediate part of the process because the removal of an employee from a workplace does not have to occur in every situation of alleged workplace violence. This allows flexibility when determining if an employee should be removed from a workplace of the Nation.

There is no recommended revision based on this comment. The LOC can consider whether removal of an employee should be an immediate part of the process.

### ***LOC Consideration***



### Comment 38 – General Comment Regarding Private Security:

**Rae M. Skenandore (written):** I've worked in a building that a security guard was assigned for the safety of a specific employee. Without anything on prevention, what's the protocol? Who determines the criteria and who would have to approve it? How long would they be there? Who pays for it?

#### *Response*

The commenter discusses a situation in which a security guard is assigned for the safety of a specific employee. The Law does not address a situation in which a security guard would be assigned to a specific employee, nor does the Law necessarily allow this to occur, so the Law does not address the criteria or approval requirements for this situation. The situation described in the comment is outside the scope of the Law.

There is no recommended revision based on this comment. The LOC may determine if more consideration is needed based on this comment.

#### *LOC Consideration*

### Comment 39 – General Comment Regarding Organization:

**Rae M. Skenandore (written):** The organization seems very awkward. Format for laws says general to specific.

#### *Response*

The commenter is correct in stating that the Legislative Procedures Act (LPA) states that all other sections within any law shall be in order from general to specific. *[see LPA section 109.11-1(d)]*. The LPA also states that sections shall be broken into logical areas, and this Law logically flows through the workplace violence process. *[see LPA section 109.11-1(d)]*.

There is no recommended revision based on this comment. The LOC can consider whether the organization is proper under the LPA, or if the format of the Law should be altered.

#### *LOC Consideration*

## **Title 2. Employment – Chapter 223**

### **WORKPLACE VIOLENCE**

223.1.	Purpose and Policy	223.8.	Supervisor Responsibilities
223.2.	Adoption, Amendment, Appeal	223.9.	Equal Employment Opportunity Department
223.3.	Definitions		Responsibilities
223.4.	Applicability	223.10.	Fraudulent Report
223.5.	Prohibited Behavior	223.11.	Confidentiality
223.6.	Reporting Workplace Violence	223.12.	Enforcement
223.7.	Future Workplace Violence		

#### **223.1. Purpose and Policy**

223.1-1. *Purpose.* The purpose of this law is to provide all Oneida Nation employees and visitors an environment that is free of violence and the threat of violence.

223.1-2. *Policy.* It is the policy of the Nation to provide a safe and secure environment for employees to work and for conducting business.

#### **223.2. Adoption, Amendment, Repeal**

223.2-1. This law was adopted by the Oneida Business Committee by resolution BC-\_\_\_\_\_.

223.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

223.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

223.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

223.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

#### **223.3. Definitions**

223.3-1. This section shall govern the definitions of words and phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Area Manager” means the person two (2) levels of supervision in the chain of command above an employee, or an individual designated to be the Area Manager by the Division Director.

(b) “EEO Department” means the Equal Employment Opportunity Department within the Nation’s Human Resource Department.

(c) “Employee” means anyone employed by the Oneida Nation in one of the following employed capacities: full-time, part-time, emergency temporary, limited term or on a contractual basis.

(d) “Intimidation” means making others feel afraid or fearful through threatening behavior.

(e) “Nation” means the Oneida Nation.

(f) “Stalking” means unwanted or obsessive attention by an individual or group toward another person. Stalking includes a course of conduct directed at a specific person that involves repeated visual or physical proximity, nonconsensual communication, or verbal,

written, or implied threats, or a combination thereof, that would cause a reasonable person fear.

(g) “Supervisor” means the person or entity responsible for directly overseeing the employee.

(h) “Threat” means the implication or expression of intent to inflict physical harm or actions that a reasonable person would interpret as a threat to physical safety or property.

(i) “Weapon” means a firearm, knife, electric weapon, club, or any other object intended to cause harm to oneself or others.

(j) “Workplace” means all of the Nation’s facilities, job sites, and any location where an employee represents the Nation, including over-the-road travel in the Nation’s owned or rented vehicles and circumstances where the employee is being reimbursed for expenses.

(k) “Workplace Violence” means any intentional act committed by an employee in a workplace that:

(1) inflicts, attempts to inflict, or threatens to inflict emotional or bodily harm on another person; or

(2) inflicts, attempts to inflict, or threatens to inflict, damage to property.

#### **223.4. Applicability**

223.4-1. This law applies to all employees in any of the Nation’s workplaces, whether or not the employee is operating within the course of his or her employment at the time the incident of workplace violence occurs.

#### **223.5. Prohibited Behavior**

223.5-1. *Prohibited Behaviors.* Examples of workplace violence include, but are not limited to, the following prohibited behaviors:

(a) intentionally causing physical injury to another person;

(b) hitting or shoving;

(c) fighting or "horseplay" that may be dangerous to others;

(d) direct threats or physical intimidation;

(e) implications or suggestions of violence;

(f) stalking;

(g) possession or use of weapons of any kind on property of the Nation, including parking lots, other exterior premises or while engaged in activities for the Nation;

(h) physical restraint, confinement;

(i) loud, disruptive or angry behavior or abusive language;

(j) sending of threatening, harassing or abusive e-mails, faxes, phone calls, text messages or other form of electronic media;

(k) using the workplace to violate protective orders;

(l) intentionally damaging property of the Nation or property of another;

(m) any other act that a reasonable person would perceive as constituting a threat of violence;

(n) throwing an object at an individual; and

(o) any threat or act of violence that is a direct result of the victim’s employment duties or responsibilities with the Nation.

223.5-2. *Exceptions to Prohibited Behavior.* The following shall be exempt from this law:

(a) Law enforcement officials and security staff are not considered to be in violation of this law when acting in their official capacity;

- (b) Employees required to use knives or other tools owned by the Nation that could potentially be used as weapons are not considered to be in violation of this law as long as the tools are used within the normal scope of employment and not used in a way to intimidate, threaten or otherwise harm another person within the workplace; and
- (c) Any other action that is consistent with laws of the Nation.

#### **223.6. Reporting Workplace Violence**

223.6-1. *Reporting by a Non-Employee.* Any non-employee is encouraged to report threats of or observed workplace violence that occurs in the Nation's facilities and workplaces. A report of workplace violence given to an employee from a non-employee shall be promptly reported in writing to the employee's supervisor. The supervisor shall perform the initial assessment of the information pursuant to section 223.8.

223.6-2. *Permissive Reporting by an Employee.* An employee may report workplace violence to his or her supervisor where the employee:

- (a) is the victim of workplace violence; or
- (b) believes he or she has been threatened with workplace violence.

223.6-3. *Mandatory Reporting by an Employee.* An employee shall report workplace violence where the employee witnesses an act or threat of workplace violence towards anyone else.

(a) *Emergency Situation.* If an emergency exists or the situation is one of immediate danger to the life and safety of a person, the employee shall, if possible without causing themselves to be in danger, contact the Oneida Police Department or local law enforcement, and facility security if determined appropriate, and take whatever emergency steps are available and appropriate to protect himself or herself from immediate harm.

(b) *Non-Emergency Situation.* If a non-emergency situation exists the employee shall report the incident in writing to the appropriate supervisor as soon as possible if the situation is not one of immediate danger to life and safety. If the incident involves the supervisor, the employee shall report the incident to the supervisor's supervisor, or if none exists to the area manager.

#### **223.7. Future Workplace Violence**

223.7-1. Where an employee has reason to believe that he, she or others, may be victimized sometime in the future, either at the workplace or as a direct result of their employment with the Nation, he or she is encouraged to provide this information in writing to his or her supervisor or the EEO Department Director or designee for an initial assessment pursuant to section 223.8-1.

(a) If an employee reports a possibility of future workplace violence to his or her supervisor the supervisor shall inform the EEO Department Director or designee.

(b) The EEO Department Director or designee shall inform the Oneida Police Department or local law enforcement and/or facility security if determined appropriate.

223.7-2. *Restraining Order.* An employee who has or obtains a current restraining order against another employee, shall immediately supply a copy of the signed order to his or her supervisor or to the EEO Department Director or designee.

(a) The supervisor shall provide copies to the area manager and the EEO Department Director or designee.

223.7-3. *Anonymous threats or letter.* In the event that an employee receives anonymous threats or letters, the employee shall immediately notify his or her supervisor. The supervisor shall

131 notify the target of the threat, take measures to ensure safety and notify Oneida Police  
132 Department or local law enforcement and facility security if determined appropriate.  
133

### 134 **223.8. Supervisor Responsibilities**

135 223.8-1. Upon receiving a report of workplace violence or otherwise becoming aware of a threat  
136 of workplace violence or a workplace violence episode, a supervisor shall immediately conduct  
137 an assessment of the situation and determine if an emergency exists or if the situation is one of  
138 immediate danger.

139 223.8-2. *Emergency Situation.* If an emergency situation exists and if possible without causing  
140 themselves to be in danger, a supervisor shall immediately contact the Oneida Police Department  
141 or local law enforcement, and facility security if appropriate, and take whatever emergency steps  
142 are available and appropriate to protect himself or herself, employees and others from immediate  
143 harm.

144 223.8-3. *Non-Emergency Situation.* If the situation is not creating immediate danger to life and  
145 safety, the supervisor shall speak to the person reporting the incident and assess the situation.

146 (a) If the supervisor deems the episode is not a workplace violence problem then the  
147 investigation as a workplace violence matter ends.

148 (b) Where the supervisor deems the episode as a workplace violence matter, he or she  
149 shall prepare a written Workplace Violence Incident Report detailing the complaint. The  
150 supervisor shall then forward this report to the EEO Department Director or designee.

151 223.8-4. A supervisor may place an employee alleged to be involved in a workplace violence  
152 incident on investigative leave in accordance with the Nation's laws, policies and rules  
153 governing investigative leave if the supervisor deems the investigative leave necessary and  
154 appropriate, except that an employee involved in an alleged incident of workplace violence shall  
155 not be allowed to resign or retire during an investigation or in lieu of a termination.

156 223.8-5. A supervisor shall consider the recommendation for disciplinary action provided by the  
157 EEO Department Director or designee pursuant to section 223.9-4(b) when carrying out a  
158 disciplinary action of an employee. The supervisor shall carry out any disciplinary action of an  
159 employee within five (5) days of receiving the recommendation. If the supervisor does not  
160 follow the disciplinary action recommendation provided by the EEO Department Director or  
161 designee, the supervisor shall provide justification for the deviation from the recommendation to  
162 the EEO Department Director and the supervisor's Area Manager.  
163

### 164 **223.9. Equal Employment Opportunity Department Responsibilities**

165 223.9-1. The EEO Department Director, or an individual assigned as designee by the EEO  
166 Department Director, shall be responsible for investigating alleged workplace violence.

167 223.9-2. Upon receipt of a completed Workplace Violence Incident Report, or other acceptable  
168 written notice of an allegation of workplace violence, the EEO Department Director or designee  
169 shall coordinate with all involved agencies or departments and immediately conduct an  
170 investigation by performing the following duties:

171 (a) Personally visit the scene of an incident as soon as possible;

172 (b) Interview employees and other witnesses;

173 (c) Examine the workplace for security risk factors associated with the incident,  
174 including examination of any reports of inappropriate behavior by the perpetrator;

175 (d) Determine the cause of the incident;

176 (e) Determine what mitigating action could prevent the incident from recurring;

177 (f) Record the findings and recommended mitigating actions; and

(g) Contact the Oneida Police Department and any other appropriate law enforcement agency.

223.9-3. In performing these investigative duties, the EEO Department Director or designee shall not interfere in the investigation of any law enforcement agencies. If at any time criminal charges are brought against an employee, then the employee shall be placed on investigative leave in accordance with the Nation's laws, policies and rules governing investigative leave, except that an employee involved in an alleged incident of workplace violence shall not be allowed to resign or retire during an investigation or in lieu of a termination.

223.9-4. Upon completion of the investigation, the EEO Department Director or designee shall:

(a) implement any preventive factors within the Nation's Human Resources Department's authority;

(b) provide a recommendation for disciplinary action, if any, to the supervisor of the employee;

(c) notify the Oneida Police Department or local law enforcement when a potential criminal act has occurred;

(d) refer employees to post-event trauma counseling for those employees desiring such assistance; and

(e) offer to provide information on filing a restraining order.

223.9-6. The Nation shall not accept a resignation from an employee when there is an ongoing investigation or in lieu of a termination.

223.9-7. In appropriate circumstances, the EEO Department Director or designee shall inform the reporting individual of the results of the investigation. To the extent possible, the Nation shall maintain the confidentiality of the reporting employee and the investigation, however the Nation may need to disclose results in appropriate circumstances; for example, in order to protect individual safety.

### **223.10. Fraudulent Report**

223.10-1. If at any time the EEO Department Director or designee or supervisor is made aware that an employee or supervisor has made a report other than in good faith, the employee or supervisor may be disciplined according to the Nation's laws, policies and rules governing employment, up to and including termination.

### **223.11. Confidentiality**

223.11-1. Information related to the application of this law is strictly confidential. Information shall not be disclosed to third parties unless:

(a) the prior written consent of the alleged victim is obtained;

(b) the release of information is in compliance with a court order; and/or

(c) the release of information is pursuant to applicable laws and/or policies.

### **223.12. Enforcement**

223.12-1. An employee or supervisor who violates this law may be subject to disciplinary action under the Nation's laws, policies and rules governing employment up to and including termination.

223.12-2. An individual who receives a criminal conviction resulting from an incident of workplace violence covered by this law, shall be ineligible for future employment until the individual is pardoned by the Nation.

224 223.12-3. An employee who violates this law may be subject to removal from a workplace of  
225 the Nation.

226

227 *End*

228

229 

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Adopted – BC-





**LEGISLATIVE OPERATING COMMITTEE  
PUBLIC MEETING**

**Workplace Violence Law**

Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
May 18, 2017 12:15 p.m.

**Present:** Tehassi Hill, David P. Jordan, Jennifer Webster, Candice Skenandore, Clorissa Santiago, Danelle Wilson, Matthew Denny, Leyne Orosco, Ed Delgado, Barbara Cornelius.

**Tehassi Hill :** Greetings. The time is 12:25 p.m. and today's date is Thursday May 18, 2017. I will now call the public meeting for the Workplace Violence Law to order.

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding these legislative proposals. The public meeting is not a question and answer period. All persons who wish to present oral testimony need to register on the sign in sheet at the back of the room. At the back of the room there is a new public meeting comment form the LOC is testing out. The form is not required to be used, but is there to be used as a tool when formulating public comments. Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Thursday May 25, 2017.

In attendance from the LOC is: Tehassi Hill, David Jordan, and Jennifer Webster.

We will begin today's public meeting for the Workplace Violence Law. This is a proposal to create a new Workplace Violence Law which would:

- Apply to all employees of the Nation in any workplace of the Nation, whether or not the employee is operating within the course of his or her employment at the time the incident of workplace violence occurs;
- Describe prohibited behaviors that constitute workplace violence and exceptions to workplace violence;
- Provide a procedure for reporting workplace violence;
- Discuss how possible future incidents of workplace violence will be handled;
- Provide responsibilities for supervisors and the Equal Employment Opportunity Department in handling workplace violence incidents; and
- Describe enforcement mechanisms for a violation of this law.

The LOC may impose a time limit for all speakers pursuant to section 16.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons.

I'll ask the audience, is anyone here to provide oral testimony for the Workplace Violence Law?

**Barbara Cornelius:** My concern is that your first bullet, where it says it applies to all employees of the Nation in any workplace of the Nation, whether or not the employee is operating within the course of his or her employment. So are we trying to control the employees at GTC? Is that what we are trying to do? Because it seems to me, having a HRD background, you're overstepping the boundaries of employer vs the employee, as if you are an employee all the time. The only ones that would be employees all the time would be your exempt employees. So that would be management, the Business Committee, those types of individuals. But your hourly employee, once they get off the clock, they should no longer be held to the workplace violence standard, because they are no longer your employee. You are an individual citizen. So if we're trying to go and curtail what happens at GTC, I think it's very inappropriate but it's also inappropriate because, I don't know who you got your guidance from, but you can't tell people what they can do when they are not working for you. Whether they are at a function or not, you can't tell them how to act if they are not working for you. Now if they are working for you, then that's another thing and there might be a group of individual employees that you might be able to do this to like maybe your police officers, your lawyers, your top level officials--you can say hey, you have to act appropriately because no matter where you are at, they know you are an Oneida official. But just your regular cashier, loan officers, just your regular everyday employee I don't think you can make that as part of that law. So you are either going to have to exempt them from law or at least research, if you don't believe me, research it so that you know that I think you're overstepping the boundaries of that workplace violence law. And then the other one is, that's all I had was just that one, where I think you're overstepping your authority when you say no matter where they are at, if they are on the clock or not, they can be called to task for their behavior. Thank you.

**Tehassi Hill:** Thank you for your comment. Is there anyone else who wishes to give oral testimony at this point?

With there being no more speakers registered, the public meeting for the Workplace Law is now closed at 12:31 p.m. Written comments may be submitted until close of business on Thursday May 25, 2017.

**-End of Meeting-**

**Clorissa N. Santiago**

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**From:** Jennifer A. Falck  
**Sent:** Tuesday, May 30, 2017 8:27 AM  
**To:** Clorissa N. Santiago  
**Subject:** FW: Public comments from Risk Management  
**Attachments:** workplace violence comments.pdf

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**From:** Rae M. Skenandore  
**Sent:** Wednesday, May 24, 2017 4:12 PM  
**To:** Jennifer A. Falck  
**Subject:** Public comments from Risk Management

Hi Jen,

Attached from Risk. The rest are mine.

I would like to emphasize the comment on the lack of preventative planning.

SHRM has excellent resources that should be considered in the development of this policy/law. At a minimum, some consideration should be given for industry standard definitions.

<https://www.shrm.org/ResourcesAndTools/tools-and-samples/policies/Documents/WVPI%20STD.pdf>

We think of just protecting employees, but the law should include others such as customers, clients, and business associates.

Anywhere it's "or designee", there should be a training requirement for that person serving in that designee capacity.

#### Prohibited Behavior

I - loud – So, if I shout BINGO! Can I be written up? This possibly needs some more descriptive language.

J – Would it be more helpful to say written or verbal...

N – should be more descriptive. Example is throwing a piece of paper.

O- I have no idea what this is supposed to mean. It does not make any sense.

The organization seems very awkward. Format for laws says general to specific.

Enforcement lists removal of the employee from a workplace. Shouldn't that have been an immediate part of the process?

There seems to be a blurring of responsibilities between what a supervisor should do and what EEO does?

Line 124 the language is awkward. "who has or obtains a current restraining order" How about If an employee obtains a restraining order against another employee, they shall immediately...

Not everything is going to be victim specific. Who files a report if someone is just shouting at a room of people? Or in the reception area of a building?

What's the protocol for requesting/reviewing video footage if available? It's not listed that it should even be reviewed.

Line 178 reads like a required action. Perhaps it should state, if necessary, contact OPD...

Shouldn't Line 191 include security?

Line 193 should be an automatic offering to employees by the supervisor. Not wait for EEO to be involved.

Is line 195 a standard practice?

Line 196 should be consistent with other related laws. I don't believe it is.

Shouldn't the confidentiality section include what's necessary for the investigation?, OPD, Security?

Sentence starting on line 199 should go with the confidentiality section.

Line 222 states "until the individual is pardoned"... A pardon is not automatic. Shouldn't it read unless, not until.

I've worked in a building that a security guard was assigned for the safety of a specific employee. Without anything on prevention, what's the protocol? Who determines the criteria and who would have to approve it? How long would they be there? Who pays for it?

Just for clarification. I've personally witnessed loud verbal threats to the BC at GTC meetings. Under this policy, as an employee and a witness I'm required to report it correct? If that individual is an employee of the Nation, they would be disciplined by their supervisor when reporting to work correct?

Rae Skenandore

Financial Management Analyst, Finance

[rskenand@oneidanation.org](mailto:rskenand@oneidanation.org)

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5/16/17

# Workplace Violence Law Proposed – Comments:

The law as proposed provides for steps and/or processes addressing real or alleged incidents of workplace violence. It does not include anything from a Nation-wide perspective of prevention, such as a threatening customer, a domestic dispute spilling into the workplace, immediate alarm/notification steps for employees such as Reception. In my opinion, those measures should be requirements in the law (ex: training as appropriate) and should be implemented;

223.6 and 223.7 – I don't really see a difference between current and future workplace violence WV. WV is WV;

223.6-1. Supervisor perform an initial assessment. Supervisors should be trained to conduct this type of assessment to be qualified to do so. It would seem more reasonable to get the information in the hands of qualified people such as EEO (if qualified) or OPD;

223.6-3. Mandatory?;

223.7-1. Report to supervisor or EEO – it should be one or the other so it is clear to employees;

223.7-2. Same as above. Also, what steps would be taken if a restraining order is given to an employee who works alongside the employee they took the RO out against?;

223.8-1. Same comment as made for 223.6-1 above;

223.8-3. Again, Supervisors assessing. Will a Supervisor be qualified and will they be objective?;

223.8-4. Supervisors have authority to put someone on investigative leave?;

Why can't someone resign when they want to? I doubt that would hold up in any court and could result in an Employment Practices liability claim;

223.9-1. Conflicts with earlier clauses where Supervisors are tasked with investigating.

It would seem that real or alleged incidents of WV would be better addressed with immediate, objective assessment/investigation by trained, qualified personnel. After that, responsibility could be pushed down to Supervisory level. My opinion.



**Oneida Nation**  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54155-0365  
 Oneida-nsn.gov



## AGENDA REQUEST FORM

- 1) Request Date: 6/2/17
- 2) Contact Person(s): Lisa Summers  
 Dept: Oneida Nation Secretary  
 Phone Number: 920 869 4478 Email: lsummer2@oneidanation.org
- 3) Agenda Title: Oneida Nation Seal and Flag Rules Second Extension
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
This Resolution grants the parties responsible for developing and adopting rules  
governing the maintenance, placement, and authorized use of the Oneida Nation  
Seal an additional ninety day extension to create and make effective such rules.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Resolution
- 2) SOE
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_
- 5) Please list any laws, policies or resolutions that might be affected:  
Oneida Nation Seal Flag law
- 6) Please list all other departments or person(s) you have brought your concern to:  
 \_\_\_\_\_
- 7) Do you consider this request urgent? ☒ Yes ☐ No  
 If yes, please indicate why:  
The first extension for the rules expires on June 10, 2017

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester:

*Please send this form and all supporting materials to:*

**LOC@oneidanation.org**  
 or  
**Legislative Operating Committee (LOC)**  
 P.O. Box 365  
 Oneida, WI 54155  
 Phone 920-869-4376

# Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

## BC Resolution # \_\_\_\_\_ Oneida Nation Seal and Flag Rules Second Extension

**WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

**WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and

**WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

**WHEREAS,** the Oneida Business Committee adopted the Oneida Nation Seal and Flag (Law) pursuant to resolution BC-01-11-17-C with an effective date of 60 days from the date of adoption, March 12, 2017; and

**WHEREAS,** the Law delegates rulemaking authority to the Oneida Nation Secretary to create rules to govern the placement, maintenance, and authorized use of the official Oneida Nation Seal, and

**WHEREAS,** the Law's adopting resolution required that such rules related to disposition of personal property be created and adopted no later than the Law's effective date; and

**WHEREAS,** the Law, in section 116.4-2 and 116.4-3, provides minimum requirements for the use of the Oneida Nation Seal on specific official government documents; and

**WHEREAS,** the rules would solely govern any further requirements for placement, maintenance, and authorized use of the Oneida Nation Seal determined necessary by the Oneida Nation Secretary; and

**WHEREAS,** the rules to govern the placement, maintenance, and authorized use of the official Oneida Nation Seal were not ready for the March 12, 2017, effective date of the Law; and

**WHEREAS,** the Oneida Business Committee adopted resolution 03-08-17-C which provided a 90-day extension to create and make effective such rules; and

**WHEREAS,** the Oneida Nation Secretary needs additional time to ensure the rules are developed in accordance with the Administrative Rulemaking Law.

**NOW THEREFORE BE IT RESOLVED,** the parties responsible for developing and adopting rules governing the placement, maintenance, and authorized use of the official Oneida Nation Seal are hereby granted a second 90-day extension to create and make effective such rules.

**NOW THEREFORE BE IT FINALLY RESOLVED,** the second 90-day extension does not impact the effective date of Oneida Nation Seal and Flag Law.





## **Statement of Effect**

### *Oneida Nation Seal and Flag Rules Second Extension*

#### ***Summary***

This Resolution grants the parties responsible for developing and adopting rules governing the maintenance, placement and authorized use of the Oneida Nation Seal an additional ninety (90) day extension to create and make effective such rules.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*

#### ***Analysis by the Legislative Reference Office***

On January 11, 2017, the Oneida Business Committee adopted a new law entitled Oneida Nation Seal and Flag (Law) pursuant to the Oneida Business Committee resolution BC-01-11-17-C. The resolution identified an effective date of sixty (60) days from the date of adoption, March 12, 2017. The Resolution also required that the Oneida Nation Secretary create rules in accordance with these amendments and shall have the final rules prepared within sixty (60) calendar days.

The Law grants rulemaking authority to the Oneida Nation Secretary to create rules to govern the placement, maintenance and authorized use of the official Oneida Nation Seal. [See *Oneida Nation Seal and Flag 116.4-4*]. The rules were not completed by the effective date of the law, March 12, 2017. In order to comply with the process set forth in the Administrative Rulemaking law, the Oneida Nation Secretary requested more time to develop rules governing the maintenance, placement and authorized use of the Oneida Nation Seal. The Oneida Business Committee adopted resolution BC-03-08-17-C which provided a ninety (90) day extension to create and make effective such rules. The ninety (90) day extension did not impact the effective date of the Oneida Nation Seal and Flag law. The Law was able to become effective on March 12, 2017, because the Law provides minimum requirements for the use of the official Oneida Nation Seal. [see *Oneida Nation Seal and Flag 116.4-2*]. The extension to complete the Oneida Nation Seal and Flag rules expires on June 10, 2017.

The Oneida Nation Seal and Flag law rules governing the maintenance, placement and authorized use of the Oneida Nation Seal will not be completed by June 10, 2017. This Resolution allows the parties responsible for developing and adopting rules governing the placement, maintenance and authorized use of the Oneida Nation Seal an additional ninety (90) day extension to create and make effective such rules.

#### ***Conclusion***

Adoption of this Resolution would not conflict with any of the Nation's laws.



**Oneida Nation**  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54155-0365  
 Oneida-nsn.gov



## AGENDA REQUEST FORM

- 1) Request Date: 6/2/17
- 2) Contact Person(s): Clorissa Santiago  
 Dept: Legislative Reference Office  
 Phone Number: 920 869 4417 Email: csantia1@oneidanation.org
- 3) Agenda Title: Real Property Law Probate Rules Extension
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:  
This resolution extends the time allotted to create administrative rules governing  
the process for probate administration.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Resolution
- 2) SOE
- 3) \_\_\_\_\_
- 4) \_\_\_\_\_
- 5) Please list any laws, policies or resolutions that might be affected:  
Real Property law
- 6) Please list all other departments or person(s) you have brought your concern to:  
 \_\_\_\_\_
- 7) Do you consider this request urgent? ☒ Yes ☐ No  
 If yes, please indicate why:  
The law becomes effective June 25, 2017.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester:

*Please send this form and all supporting materials to:*

**LOC@oneidanation.org**  
 or  
**Legislative Operating Committee (LOC)**  
 P.O. Box 365  
 Oneida, WI 54155  
 Phone 920-869-4376

# Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

## BC Resolution # \_\_\_\_\_ Real Property Law Probate Rules Extension

- WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and
- WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
- WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Nation Constitution by the Oneida General Tribal Council; and
- WHEREAS,** the Oneida Business Committee adopted the Real Property law pursuant to resolution BC-05-29-96-A and amended the law by resolutions: BC-03-01-06-D, BC-04-28-10-E, BC-02-25-15-C, BC-05-13-15-B, and most recently with BC-02-08-17-A; and
- WHEREAS,** the most recent amendments will become effective on June 25, 2017; and
- WHEREAS,** the most recent amendments update the probate process, transfer the Oneida Land Commission's original hearing body authority to the Oneida Judiciary, and delegate joint administrative rulemaking authority to the Division of Land Management and the Oneida Land Commission; and
- WHEREAS,** the Division of Land Management and the Oneida Land Commission are required to create rules further defining the process for probate administration; and
- WHEREAS,** all rules developed by the Division of Land Management and the Oneida Land Commission were required to be effective on June 25, 2017; and
- WHEREAS,** additional time is needed to develop and make effective the rules regarding the process for probate administration in accordance with the process set forth in the Administrative Rulemaking law; and
- WHEREAS,** section 601.8 of the Real Property law is insufficient without the addition of the promulgated rules because it does not contain the process for probate administration.

**NOW THEREFORE BE IT RESOLVED,** that in recognition that the Division of Land Management and the Oneida Land Commission have not yet promulgated the rules governing probate administration, the following provision shall replace section 601.8 of the Real Property law until the probate rules are promulgated and effective:

### **601.8. Disposition Of Estates Of Deceased Tribal Members.**

601.8-1. The purpose of this section is to formalize laws to handle the disposition of deceased tribal members' trust property, with or without a will. The intent of this section is to provide procedures which make it possible for equitable and fair decisions to be made for the surviving family, as well as promoting ongoing peace and harmony within the community.

(a) Tribal members holding fee land within the reservation may use the laws and procedures of the State of Wisconsin or those of this Law.

(b) Tribal members holding trust land within the reservation shall use the laws and procedures of this Section.

601.8-2. Non-members of The Oneida Tribe and non-citizens of the United States cannot acquire Trust land through inheritance. Where interests are specifically devised to individuals ineligible to inherit the following options are provided:

(a) Sale of interest to the Oneida Tribe or an eligible heir for its fair market value;

(b) Acquire a life estate in the property if an ineligible spouse and/or minor child.

601.8-3. Interests of Heirs who cannot be found will be sold to the Oneida Tribe at fair market value, or to an eligible heir, and the money returned to the estate for distribution.

601.8-4. In the absence of any heir or devisee, interests will escheat to the Oneida Tribe of Indians of Wisconsin.

601.8-5. Personal property which does not come under the guidelines of this Law, and may be distributed at the traditional ten day meal by family members, include:

(a) Clothing, furnishings, jewelry, and personal effects of the deceased not valued at more than \$100 per item.

(b) Ceremonial clothing or artifacts, including eagle feathers, beadwork, dance sticks, flutes, drums, rattles, blankets, baskets, pottery, medicines, and animal skins.

601.8-6. The Land Commission, or its designated sub-committee, shall make a declaratory ruling by authority of the Administrative Procedures Act, Section 9, in any case brought before them by any person claiming to be an heir of the deceased and requesting any of the following determinations:

(a) Heirs of Oneida members who die without a will (intestate) and possessed of fee or trust property coming under the authority of the Oneida Tribe of Indians of Wisconsin;

(b) Approve or disapprove wills of deceased Oneida members disposing of trust property;

(c) Accept or reject full or partial renunciations of interest;

(d) Allow or disallow creditors' claims against estates of deceased Oneida members;

(e) Decree the distribution of all assets of a deceased Oneida member.

601.8-7. The Staff Attorney for the Division of Land Management will prepare a file for each probate hearing within 30 days of receipt of a Request for Probate Hearing from anyone claiming to be an heir of the deceased. Extensions to this 30 day requirement shall be requested from the Land Commission when proven necessary to complete the file. Relatives and agencies will be asked to cooperate in developing a complete probate file containing:

(a) Family history information,

(b) Death certificate,

(c) Personal and Real Property Inventory,

(d) BIA-IIM Account Report,

(e) Creditor Claims,

(f) Original will, if any,

(g) Names, addresses and phone numbers of all parties-in-interest.

601.8-8. Definitions As Used In This Section

(a) Children And Issue: Includes adopted children and children of unwed parents where paternity has been acknowledged, or established by court decree. This does not include non-adopted step-children.

(b) Parties-in-interest: This includes:

(1) Heirs of the decedent

(2) A beneficiary named in any document offered for probate, such as the will of the decedent, land lease or sale agreement for real estate.

(3) A person named as administrator or personal representative in any document offered for probate.

(4) Additional persons as the Land Commission may by order include who may be affected by the actions of the Land Commission, or its designated sub-

committee, whether by receipt of or denial of any property which is a part of the action.

(c) Heirs: Any person who is entitled under Tribal law to an interest in the property of a decedent.

601.8-9. *Parties-in-interest.* The net estate of a decedent, not disposed of by will, passes to his/her surviving heirs or Parties-in-interest as follows:

(a) To the spouse:

(1) All Real Property.

(2) All other than Real Property if there are no surviving children of the decedent.

(3) 2 of other than Real Property of the decedent's estate if there are surviving children of the decedent, or children of any deceased child of the decedent (grandchildren) who take by right of representation.

(b) To Surviving Children and children of any deceased child of the decedent by rights of representation;

(1) All of the estate if there is no surviving spouse, divided equally to all in the same degree of kinship to the decedent. Surviving children of a deceased child of the decedent will divide their parent's share.

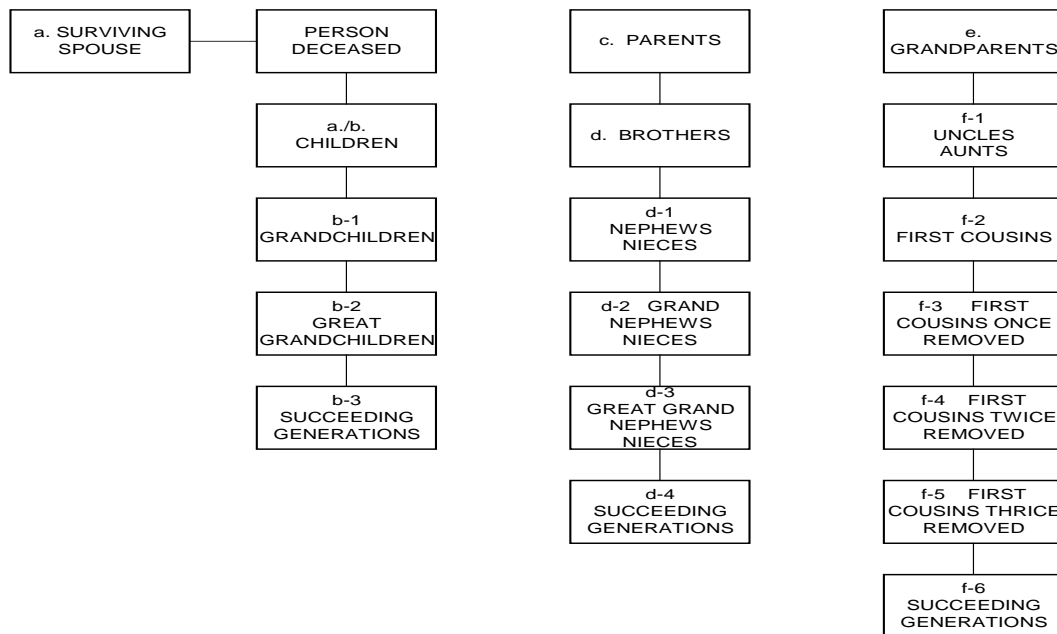
(c) All of the estate to the parents, equally divided, if no surviving spouse, children or children taking by right of representation.

(d) All of the estate to the brothers and sisters and children of deceased brothers or sisters by representation, divided equally, If no surviving spouse, children, or parents.

(e) All of the estate to the grandparents of the deceased divided equally, if no surviving spouse, children parents or brothers and sisters.

(f) All of the estate divided equally to lineal descendants of the grandparents of the deceased in the same order as (b) thru (e) if no surviving spouse, children, parents brothers/sisters, or grandparents of the decedent.

(g) Diagram of Intestate Succession as outlined in (a) thru (f) in Figure 1.



(h) Any 2% interests, or less, in land, as defined in 8-6(c) of this Law.

601.8-10. When the Probate File is complete, it will be placed on the agenda for review by the Land Commission, who will first review it for sufficiency. If the Land Commission determines the file is incomplete, it is sent back to the Staff Attorney with further instructions. If the probate file is determined to be complete, a hearing shall be scheduled at a time when most, if not all, parties can attend.

(a) *Notice:* All parties-in-interest will be sent a certified personal notice of the hearing to their current or last known address. The hearing notice will also be posted at NORBERT HILL CENTER, LITTLE BEAR DEVELOPMENT CENTER and other public places within the reservation, and published in at least two issues of the Kalihwisaks, the Milwaukee Sentinel/Journal, a Green Bay Paper and an Appleton paper. The notice will include time and place for hearing, agenda, approximate length of hearing and contact person. This notice will be provided at least 10 days before the hearing takes place.

(b) The hearing will generally adhere to the following format:

(1) Rules for an open, nonjudgmental discussion shall be presented and accepted.

(2) Probate file is reviewed and data added or corrected based on consensus of those present.

(3) Ample time is provided for full discussion of the process, presentation of additional data for the file, and defining of problems or disputes to be entered into the record.

(4) All problems or disputes shall be settled in this hearing, with all parties-in-interest present and assisting in this resolution. This includes recommendations for clear partition of any real property held in undivided interest, and full discussion of creditor claims. This hearing shall be continued to another date only if unpredicted circumstances or unavailable information impedes the progress of resolution.

(5) When all problems, disputes and legal issues of the case have been resolved to the satisfaction of all parties-in-interest, the hearing body will issue its Final or Declaratory Ruling to the Director of Land Management, who will notify the Land Commission and all parties involved in the hearing. This Final Ruling takes effect 60 days after mailings.

601.8-11. A party to a probate hearing may seek a rehearing of any of the above determinations listed in 8-3 upon provision of a written request to the Director of the Division of Land Management within 60 days after the Declaratory Ruling is issued. It is the responsibility of the aggrieved party to make certain that adequate documentation necessitating a rehearing is attached to the request.

(a) This request must include affidavits, witness list, summary of testimony and other support documents which would provide a justifiable reason why any new information was not available at the original hearing.

(b) If basis for rehearing is alleged procedural irregularities, the request shall include complete documentation of these irregularities.

(c) If basis for rehearing is the constitutionality of the Law or its procedures, a legal brief shall be attached to the request which clearly establishes the legal rationale for this claim.

(d) If basis for rehearing is that the determination is clearly erroneous, arbitrary and/or capricious, a clear statement or legal brief summarizing the party's rationale for believing this to be true shall be attached to the request.

601.8-12. The Director of Land Management will place the petition for rehearing on the first agenda of the Land Commission following the receipt of the written request.

(a) The Land Commission may deny a rehearing if there is insufficient grounds for the petition, or if the petition is not filed in a timely fashion.

(b) The Land Commission may order a rehearing based on the merit of the petition. The petition and supporting papers are then sent to all participants of the first hearing along with the date for the rehearing.

(c) If a rehearing is ordered, the Land Commission will adhere to the same notice requirements as in the first hearing. In addition, the hearing body should be composed of the same individuals responsible for the first hearing. Based on the information presented at the rehearing, the hearing body may adhere to the former Ruling, modify or vacate it, or make such further determinations that are warranted.

601.8-13. Any Declaratory Ruling given under this Section may be appealed to the Judiciary within 30 days from the date of the Ruling. The Ruling is sent to the Parties-in-interest with same documentation outlined in 8-6.

601.8-14. A party may petition the Judiciary to reopen the case within three years after the Declaratory Ruling has been mailed out if they can prove all of the following:

- (a) They were not a participant in the first hearing;
- (b) They were completely unaware that the first probate hearing occurred and they have proof that they were not duly noticed; and
- (c) They have rights which were erroneously left out of the first probate hearing.

601.8-15. After looking at the record of the first hearing, the Judiciary may rule that the Petition To Reopen is not sufficient, or it may send an order to the Land Commission to provide a second hearing based on the evidence provided in the Petition.

601.8-16. All probate Declaratory Rulings of the Land Commission or Judgments of the Judiciary shall be recorded in the Division of Land Management.

(a) If fee land is part of the Ruling, it shall also be recorded at the County Register of Deeds.

(b) If trust land is part of the Ruling, it shall also be recorded at the Department of Interior Aberdeen Title Plant.

**NOW THEREFORE BE IT FURTHER RESOLVED,** that the effective date of the most recent amendments to the Real Property Law contained in resolution BC-02-08-17-A shall remain June 25, 2017, but the time allotted to create administrative rules governing the process for probate administration is extended until the probate rules are promulgated and effective.



## **Statement of Effect**

### *Real Property Law Probate Rules Extension*

#### ***Summary***

This resolution extends time allotted to create administrative rules governing the process for probate administration.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*

#### ***Analysis by the Legislative Reference Office***

The Oneida Business Committee amended the Real Property law by resolution BC-02-08-17-A. The amendments, set to become effective on June 25, 2017, update the probate process, transfer the Oneida Land Commission's original hearing body authority to the Oneida Judiciary, and delegate joint administrative rulemaking authority to the Division of Land Management and the Oneida Land Commission to promulgate rules to further define the process for probate administration.

The Division of Land Management and the Oneida Land Commission were required to create the rules governing probate administration by June 25, 2017, when the law becomes effective. The probate rules will not be completed by the deadline so additional time is needed to develop and make effective the rules regarding the process for probate administration in accordance with the process set forth in the Administrative Rulemaking law.

The resolution extends time allotted to the Division of Land Management and the Oneida Land Commission to create administrative rules governing the process for probate administration. Without the rules promulgated, section 601.8 of the Real Property law governing probate will be insufficient because it does not contain the necessary details and process for probate administration. In recognition of the fact that the Real Property law's section governing probate is insufficient without the addition of rules, the resolution includes a provision that shall replace section 601.8 of the law until the probate rules are promulgated and effective.

The probate rulemaking extension does not affect the effective date of the law.

#### ***Conclusion***

Adoption of this Resolution would not conflict with any of the Nation's laws.



**From:** Jennifer A. Falck

**Sent:** Wednesday, May 17, 2017 4:38 PM

**To:** Brandon L. Yellowbird-Stevens; Rhiannon R. Metoxen; Ronald W. Hill; Danelle A. Wilson; Fawn J. Billie; <sup>312 of 361</sup> Cathy L. Bachhuber; David P. Jordan; Leyne C. Orosco; Jennifer A. Webster

**Cc:** Maureen S. Perkins; Robert J. Collins

**Subject:** LRC Emergency Adoption Packet E-poll

**Hello Everyone-**

Please approve or disapprove the attached Legal Resource Center Emergency Adoption packet, so it can go to the OBC for adoption. The analysis is now included in the packet.

Thank You

**From:** Jennifer A. Webster  
**Sent:** Wednesday, May 17, 2017 4:40 PM  
**To:** Jennifer A. Falck; Brandon L. Yellowbird-Stevens; Rhiannon R. Metoxen; Ronald W. Hill; Danelle A. Wilson; Fawn J. Billie; Cathy L. Bachhuber; David P. Jordan; Leyne C. Orosco  
**Cc:** Maureen S. Perkins; Robert J. Collins  
**Subject:** RE: LRC Emergency Adoption Packet E-poll  
**Importance:** High

Approve,

Jenny

**From:** Fawn J. Billie  
**Sent:** Friday, May 19, 2017 9:38 AM  
**To:** Jennifer A. Falck; Brandon L. Yellowbird-Stevens; Rhiannon R. Metoxen; Ronald W. Hill; Danelle A. Wilson; Cathy L. Bachhuber; David P. Jordan; Leyne C. Orosco; Jennifer A. Webster  
**Cc:** Maureen S. Perkins; Robert J. Collins  
**Subject:** RE: LRC Emergency Adoption Packet E-poll

support

**From:** Ronald W. Hill  
**Sent:** Thursday, May 18, 2017 1:21 PM  
**To:** Jennifer A. Falck; Brandon L. Yellowbird-Stevens; Rhiannon R. Metoxen; Ronald W. Hill; Fawn J. Billie; Cathy L. Bachhuber; David P. Jordan; Leyne C. Orosco; Jennifer A. Webster  
**Cc:** Maureen S. Perkins; Robert J. Collins  
**Subject:** RE: LRC Emergency Adoption Packet E-poll

Approve.

**From:** David P. Jordan  
**Sent:** Thursday, May 18, 2017 9:54 AM  
**To:** Jennifer A. Falck; Brandon L. Yellowbird-Stevens; Rhiannon R. Metoxen; Ronald W. Hill; Danelle A. Wilson; Fawn J. Billie; Cathy L. Bachhuber; Leyne C. Orosco; Jennifer A. Webster  
**Cc:** Maureen S. Perkins; Robert J. Collins  
**Subject:** RE: LRC Emergency Adoption Packet E-poll

support

**From:** Ronald W. Hill

**Sent:** Tuesday, May 23, 2017 5:18 PM

**To:** Candice E. Skenandore; Brandon L. Yellowbird-Stevens; David P. Jordan; Fawn J. Billie; Jennifer A. Webster; Cathy L. Bachhuber; Danelle A. Wilson; Leyne C. Orosco; Rhiannon R. Metoxen

**Cc:** Krystal John; Jennifer A. Falck

**Subject:** RE: E-POLL: Hunting, Fishing, Trapping

Approve.

**From:** Fawn J. Billie

**Sent:** Tuesday, May 23, 2017 6:08 PM

**To:** Candice E. Skenandore; Brandon L. Yellowbird-Stevens; David P. Jordan; Jennifer A. Webster; Ronald W. Hill; Cathy L. Bachhuber; Danelle A. Wilson; Leyne C. Orosco; Rhiannon R. Metoxen

**Cc:** Krystal John; Jennifer A. Falck

**Subject:** RE: E-POLL: Hunting, Fishing, Trapping

Approve

**From:** Brandon L. Yellowbird-Stevens

**Sent:** Tuesday, May 23, 2017 5:15 PM

**To:** Jennifer A. Webster; Candice E. Skenandore; David P. Jordan; Fawn J. Billie; Ronald W. Hill; Cathy L. Bachhuber; Danelle A. Wilson; Leyne C. Orosco; Rhiannon R. Metoxen

**Cc:** Krystal John; Jennifer A. Falck

**Subject:** RE: E-POLL: Hunting, Fishing, Trapping

Approve

**From:** Jennifer A. Webster

**Sent:** Tuesday, May 23, 2017 5:09 PM

**To:** Candice E. Skenandore; Brandon L. Yellowbird-Stevens; David P. Jordan; Fawn J. Billie; Ronald W. Hill; Cathy L. Bachhuber; Danelle A. Wilson; Leyne C. Orosco; Rhiannon R. Metoxen

**Cc:** Krystal John; Jennifer A. Falck

**Subject:** RE: E-POLL: Hunting, Fishing, Trapping

Approve,

Jenny

**From:** Candice E. Skenandore

**Sent:** Tuesday, May 23, 2017 3:56 PM

**To:** Brandon L. Yellowbird-Stevens; David P. Jordan; Fawn J. Billie; Jennifer A. Webster; Ronald W. Hill; Cathy L. Bachhuber; Danelle A. Wilson; Leyne C. Orosco; Rhiannon R. Metoxen

**Cc:** Krystal John; Jennifer A. Falck

**Subject:** E-POLL: Hunting, Fishing, Trapping

**Importance:** High

Good Afternoon,

On May 17<sup>th</sup> the LOC agreed to make changes to the laws that will transfer hearing authority from ERB to the Judiciary. Those laws were forwarded to a public meeting date of June 15<sup>th</sup>. Among those laws is the Hunting, Fishing and Trapping law.

Attached is the revised legislative analysis, redline and draft regarding the Hunting, Fishing & Trapping law. After the May 17<sup>th</sup> LOC meeting further amendments were made to the law, specifically section 406.4-3 which provides clarity that those that hunt, fish and trap on the Reservation and are non-member Indians or non-Indians may also be subject to State requirements. This change was based on meetings with the DNR.

This e-poll is asking that you approve or deny the noted amendments and updated analysis.

Your decision to approve or deny these changes is imperative in order to meet the Kali deadline which is Thursday, May 25<sup>th</sup>. Your immediate response is appreciated.

**From:** David P. Jordan

**Sent:** Tuesday, May 23, 2017 5:45 PM

**To:** Candice E. Skenandore; Brandon L. Yellowbird-Stevens; Fawn J. Billie; Jennifer A. Webster; Ronald W. Hill; Cathy L. Bachhuber; Danelle A. Wilson; Leyne C. Orosco; Rhiannon R. Metoxen

**Cc:** Krystal John; Jennifer A. Falck

**Subject:** RE: E-POLL: Hunting, Fishing, Trapping

Approve



A good mind. A good heart. A strong fire.

*NOTICE: This message is intended for the use of the addressee and may contain confidential information. If you are not the intended recipient, you are hereby notified that any copying or dissemination of this message is prohibited. If you have received this message in error, please notify by reply email or by telephone and immediately delete the message and all of its attachments.*





## Legislative Operating Committee Update

# 2014 - 2017 Legislative Term in Review

So far, this has been a very successful and productive term for the Legislative Operating Committee; with many new laws being adopted and several existing laws being amended. Although much has been accomplished, there are still many legislative items that the LOC is still working to complete before the end of the term; and there is much to prepare for the 2017-2020 term.

### 21 Laws Amended This Term

So far this term, the BC and GTC have amended 21 different laws—and five laws were amended twice.

- ☑ Election Law (4/23/17)
- ☑ Endowment Fund (4/12/17)
- ☑ Drug and Alcohol Free Workplace (4/12/17)
- ☑ Per Capita (2/22/17)
- ☑ Conflict of Interest (2/8/17)
- ☑ Real Property (2/8/17 and 3/13/15)
- ☑ Hunting, Fishing and Trapping (1/25/17)
- ☑ Tobacco (1/25/17)
- ☑ Community Support Fund (1/11/17)
- ☑ Leasing (10/26/16)
- ☑ Back Pay (10/26/16 and 8/13/14)
- ☑ Vendor Licensing (10/12/16)
- ☑ Garnishment (7/27/16)
- ☑ Marriage (5/25/16 and 5/27/15)
- ☑ Administrative Procedures Act (2/24/16)
- ☑ Public Use of Tribal Land (1/13/16 and 12/10/14)
- ☑ ONGO (9/9/15)
- ☑ Investigative Leave (6/24/15 and 8/13/14)
- ☑ Motor Vehicle Registration (4/22/15)
- ☑ Rules of Appellate Procedure (3/25/15)
- ☑ Child Support (8/13/14)



### The 2014-2017 term Legislative Operating Committee

(Left to Right)

David P. Jordan (Councilmember)  
Fawn Billie (Councilmember)  
Brandon Yellowbird Stevens (LOC Chair)  
Jennifer Webster (Councilmember)  
Ron "Tehassi" Hill (LOC Vice-Chair)

### 8 New Laws

So far this term, 8 new laws have been added to the Code of Laws:

- ☑ Budget Management & Control (2/8/17—but not effective until 10/1/17)
- ☑ Oneida Nation Seal and Flag (1/11/17)
- ☑ Eviction and Termination (10/12/16)
- ☑ Landlord-Tenant (10/12/16)
- ☑ Mortgage & Foreclosure (8/10/16)
- ☑ Administrative Rule-making (2/24/16)
- ☑ Furlough Policy (11/10/15)
- ☑ Leasing (5/13/15—but this will not go into effect until 30 days after it has been approved by the Secretary of the Interior—we are still awaiting approval.)

### Pending

The LOC is currently nearing completion on several legislative items, and it is anticipated that many, if not all, of these items will also result in new laws or amendments to existing laws by the end of the term or shortly thereafter. These include:

#### New Laws Nearly Completed

- ☑ Workplace Violence law
- ☑ Business Committee Meetings law
- ☑ Children's Code
- ☑ Child Care Complaint law
- ☑ Sanctions & Penalties for Elected and Appointed Officials
- ☑ Vehicle Driver & Fleet Management
- ☑ GTC Meetings law (*this will be sent to GTC to consider adopting, so it may not be adopted by the end of the term, but by the end of this term, it should be finalized and hopefully placed on an upcoming GTC agenda*)

#### Amendments Nearly Completed

- ☑ Cemetery Law
- ☑ Administrative Rulemaking
- ☑ Domestic Animals
- ☑ Comprehensive Policy Governing Boards, Committees and Commissions

### The Oneida Code of Laws now has 97 Chapters

In addition to processing all of the proposals to create and amend laws, the LOC has also been working on various other projects. One of the main efforts this term was to overhaul and reorganize the Code of Laws. Now, the Code of Laws has been divided into nine "Titles"—and each law is a chapter within a specific title. The new titles include:

Title 1—Government and Finances  
Title 2—Employment  
Title 3—Health and Public Safety  
Title 4—Environment & Natural Resources  
Title 5 – Business  
Title 6—Property and Land  
Title 7—Children, Elders and Family  
Title 8—Judicial System  
Title 9—Education

In addition, existing policies have also been merged into the Code of Laws—policies were adopted in the same manner as a law and have the force and effect of law—this change did not change the legal status of duly adopted policies.

The LOC also maintains legislative information on the Oneida Register—including public meeting notices, information about past public meetings, the Code of Laws, certified rules, and more. To learn more, visit the Register at [www.oneida-nsn.gov/register](http://www.oneida-nsn.gov/register), or contact the Legislative Reference Office.

Legislative Reference Office  
PO Box 365, Oneida WI 54155  
LOC@OneidaNation.org (920) 869-4376



TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office Staff Attorney  
DATE: June 7, 2017  
RE: Certification of Landlord-Tenant Law Rule No. 4 – Income Based Rent to Own Program Eligibility, Selection and Other Requirements

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The Legislative Reference Office has reviewed the certification packet provided by the Comprehensive Housing Division, as defined in the Eviction and Termination law, for the Landlord-Tenant Law Rule No. 4 – Income Based Rent to Own Program Eligibility, Selection and Other Requirements (the “Rule”).

If certified by the Legislative Operating Committee, the Rule Handbook would become effective on June 15, 2017.

### **Administrative Record**

The certification packet contains all documentation required by the Administrative Rulemaking law for a complete administrative record.

The certification packet contains:

- A memorandum containing the Rule’s procedural timeline;
- Updated draft of the Rule;
- Memorandum from Dale Wheelock, Executive Director of the Oneida Housing Authority approving the draft Rule;
- Summary Report;
- Public Meeting Notice;
- Public Meeting Draft of the Rule;
- Copy of Public Meeting Notice as it appeared in the Kalihwisaks;
- Public Meeting Sign In Sheet;
- Public Meeting Transcript; and
- Public Meeting Comment Memorandum.

### **Procedural Requirements**

The certification packet illustrates that the promulgation of the rule complies with the procedural requirements contained in the Administrative Rulemaking law.

In accordance with the Administrative Rulemaking law:

- A public meeting notice for the Rule was published in the Kalihwisaks on May 4, 2017;

- A public meeting for the Rule Handbook was held on May 18, 2017;
- The public comment period was held open until May 25, 2017; and
- The Executive Director of the Oneida Housing Authority approved the Rule on June 7, 2017.

### **Rulemaking Authority**

The Rule did not exceed the rulemaking authority granted under the law for which the Rule is being promulgated.

### **Conclusion**

**Promulgation of the Landlord-Tenant law Rule No. 4 – Income Based Rent to Own Program Eligibility, Selection and Other Requirements.**



## MEMORANDUM

**TO:** Legislative Operating Committee

**FROM:** Krystal L. John, Staff Attorney

**DATE:** June 7, 2017

**SUBJECT:** Request for Certification of Procedural Compliance  
Landlord-Tenant Rule No. 4 – Income Based Rent to Own Program Eligibility,  
Selection and Other Requirements

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The Comprehensive Housing Division, as defined in the Eviction and Termination law, is exercising its rulemaking authority to further define sections of Title 6 Property and Land – Chapter 611; Landlord-Tenant.

This rule is newly drafted and is not a revision of a prior rule.

In accordance with the Administrative Rulemaking law, a public meeting was held for this rule on May 18, 2017 for which the comment period expired on May 25, 2017.

The following attachments are included for your review:

1. Rule No. 4 – Income Based Rent to Own Program Eligibility, Selection and Other Requirements
2. Comprehensive Housing Division (Oneida Housing Authority) Approval
3. Summary Report
4. Public Meeting Notice
5. Copy of Public Meeting Published in the Kalihwisaks – Page 40 of the May 4, 2017 issue
6. Public Meeting Sign-in Sheet
7. Public meeting transcription from the May 25, 2017 Public Meeting
8. Public Meeting Comment Memorandum

Following certification, this rule shall become effective on June 15, 2017.



## Title 6. Property and Land – Chapter 611

### LANDLORD-TENANT

#### Rule # 4 – Income Based Rent to Own Program Eligibility, Selection and Other Requirements

- 4.1. Purpose and Effective Date
- 4.2. Adoption and Authority
- 4.3. Definitions
- 4.4. Eligibility Requirements
- 4.5. Application Process and Wait List
- 4.6. Tenant Selection
- 4.7. Setting Rents
- 4.8. Annual Inspection and Background Check
- 4.9. Rent to Own Agreement Cancellation

#### 4.1. Purpose and Delegation

4.1-1. *Purpose.* The purpose of this rule is to provide additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division's income-based homeownership program. The mission of the income-based homeownership program is to offer Tribal members homeownership opportunities without requiring credit checks or down payments which offers payment plans that may include federal subsidy, is free of interest, and with payment amounts based on household income. It is always the Comprehensive Housing Division's policy to develop, maintain, and operate affordable housing in safe, sanitary and healthy environments within the reservation.

4.1-2. *Delegation.* The Landlord-Tenant law delegated the Comprehensive Housing Division and Land Commission joint rulemaking authority pursuant to the Administrative Rulemaking law. However that delegation excluded the Land Commission from having joint authority where the rules relate solely to premises administered pursuant to federal funding. Accordingly, the Comprehensive Housing Division has sole rulemaking authority for these rules.

#### 4.2. Adoption and Authority

4.2-1. This rule was adopted by the Comprehensive Housing Division in accordance with the procedures of the Administrative Rulemaking law.

4.2-2. This rule may be amended or repealed by the approval of the Comprehensive Housing Division pursuant to the procedures set out in the Administrative Rulemaking law.

4.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

4.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure or other regulation, the provisions of this rule control.

4.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Landlord-Tenant law, provided that tenants are currently subject to the Mutual Help Agreement shall remain subject to the Mutual Help Agreement with this rule applying to all future rent-to-own agreements entered into by the Comprehensive Housing Division.

#### 4.3. Definitions

4.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.



(a) “Comprehensive Housing Division” means the entity responsible for housing matters specifically related to rent-to-own agreements as defined by Oneida Business Committee Resolution.<sup>1</sup>

(b) “Household” means all persons residing at the premises.

(c) “HUD” means the United States Department of Housing and Urban Development.

(b) “Landlord” means the Nation in its capacity to rent real property subject to a rental agreement.

(c) “Nation” means the Oneida Nation.

(d) “Premises” means the property covered by a rent-to-own agreement, including not only the real property and fixtures, but also any personal property furnished by the landlord pursuant to a rental agreement.

(e) “Rent-to-Own Agreement” means a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose.

(f) “Tenant” means the person granted the right to use or occupy a premise pursuant to a rental agreement.

(g) “Tribal member” means an enrolled member of the Nation.

#### **4.4. Eligibility Requirements**

4.4-1. *Tribal Member Status.* At least one (1) of the heads of household required to sign the rent-to-own agreement is required to be a Tribal member. Comprehensive Housing Division staff shall verify enrollment status by either requiring a copy of the Tribal Identification Card or requesting verification from the Trust Enrollment Department.

4.4-2. *Dependent Minor.* In order to be eligible there must be a minimum of one (1) minor in the household composition that is a full-time dependent of a head of household at the time of application.

4.4-3. *Maximum Income.* Pursuant to NAHASDA, in order to be eligible for an income-based rent-to-own agreement, the household must qualify as low income at the time of initial occupancy. In order to qualify as low-income, applicants’ household income may not exceed eighty percent (80%) of the regional gross annual income based on the data from Outagamie County.<sup>2</sup> For the purposes of this section, gross annual income is all income from any and all sources of income from all adult members of the household anticipated to be received in an upcoming twelve (12) month period unless specifically excluded from income in this section. Applicants shall provide Comprehensive Housing Division staff written verification of income.

(a) For purposes of calculating income to determine eligibility, the Comprehensive Housing Division staff shall include per capita payments to the extent that receipt of per capita payment may be verified for the prior year based on the tax return.

(b) For the purpose of calculating income to determine eligibility, the Comprehensive Housing Division staff shall include in annual income gross income from household

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<sup>1</sup> See BC Resolution 10-12-16-D providing that for purposes of the Landlord-Tenant law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

<sup>2</sup> Pursuant to resolution BC-01-25-12-A, Outagamie County is designated as the data source for collecting regional gross income for determining low-income housing eligibility because the income in that area is generally higher than Brown County’s and results in more persons being eligible based on the income requirements.



assets where net household assets are defined in accordance with 24 CFR 5.603.<sup>3</sup>

(b) For purposes of calculating income to determine eligibility, the Comprehensive Housing Division staff may not include the following:

- (1) Income from employment of any household minors;
- (2) Payments received for the care of foster children and/or handicapped/mentally incompetent adults;
- (3) Lump-sum additions to household assets including, but not limited to, inheritances, insurance payments, capital gains, and settlements for personal and/or property losses, excluding payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay, which are included in income;
- (4) Amounts received by the household that is specifically for, or in reimbursement of, the cost of medical expenses for any member of the household;
- (5) Income of a live-in medical aide;
- (6) Any amounts received as student financial assistance;
- (7) Income of any adult household members that are students, other than the head of household, in excess of \$480 annually; the first \$480 of annual income received by an adult student household member shall be included as income;
- (8) Payments made to any member of the household serving in the armed forces for exposure to hostile fire;
- (9) Amounts received under training programs funded by HUD;
- (10) Amounts received by persons with disabilities, which amounts are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because such amounts are set aside for use under a Plan for Achieving Self-Support;
- (11) Temporary, nonrecurring and/or sporadic income (including gifts);
- (12) Adoption assistance payments that exceed \$480 annually; the first \$480 of annual adoption assistance payments shall be included as income;
- (13) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts;
- (14) Amounts paid by a state agency to a member of the household with a developmental disability to offset the cost of services and/or equipment needed to keep the developmentally disabled member living in the household; and
- (15) Amounts specifically excluded from income by any applicable federal statute and/or regulation, specifically those identified in the Federal Register.<sup>4</sup>

4.4-4. *Minimum Income.* Applicants shall have a minimum income of \$30,000 at the time of application.

4.4-5. *Outstanding Debts.* Applicants for a rental agreement may not have a balance greater than two hundred dollars (\$200) owed to any utility provider and may not have any prior debt owed to the Comprehensive Housing Division.

4.4-6. *Prior Comprehensive Housing Division Eviction.* Applicants that have had a rental agreement with the Comprehensive Housing Division subject to an eviction and termination

<sup>3</sup> See HUD Occupancy Handbook, Exhibit 5-2: Assets.

<sup>4</sup> The most recent notice of federally required exclusions was published on December 14, 2012 and can be found in the Federal Register at 77 FR 74495.

within two (2) years from the date of the application are not eligible to participate in the income-based rent-to-own program.

4.4-7. *Criminal Convictions.* Applicants with any of the following types of convictions are not eligible for participation in the rent-to-own program, provided that the Pardon and Forgiveness law may provide an exception to the conditions contained in this section:

- (a) A drug conviction within three (3) years from the date of application;
- (b) A felony conviction within five (5) years from the date of application; and/or
- (c) A criminal conviction based upon an act of violence within two (2) years from the date of the application.

4.4-8. *Homeowner Status.* Applicants that are current homeowners are not eligible for participation in the income-based rent-to-own program.

4.4-9. *Current Comprehensive Housing Division Tenants.* Applicants that are current tenants of the Comprehensive Housing Division are required to be in compliance with the rental program agreement and any accompanying rules in order to be eligible for participation in the income-based rent-to-own program.

#### **4.5. Application Process and Wait List**

4.5-1. *Applying.* Persons wishing to participate in the income-based rent-to-own program shall complete the Comprehensive Housing Division rent-to-own agreement application and any other accompanying forms required based on the income-based program eligibility requirements. The Comprehensive Housing Division staff may not consider any applications for selection and/or placement on the wait list until the application and all accompanying forms are complete. Upon receipt of a completed application, including all supplementary forms, Comprehensive Housing Division staff shall date and time stamp the application. If, regardless of a complete application submittal, additional information is required to determine eligibility, the Comprehensive Housing Division staff shall request such information and maintain the application submittal date provided that the applicant responds to the information requests in a reasonably timely fashion.

(a) *Household Composition Form.* The Comprehensive Housing Division staff shall require applicants to the income-based homeownership program to complete a Household Composition Form which provides the full name, age and date of birth of each person contemplated to reside in the home. In order to verify such information, the Comprehensive Housing Division staff shall require that applicants submit the following with the Household Composition Form:

- (1) Copies of social security cards for each person contemplated to reside in the home, provided that for newly born babies that have not yet been issued a social security card a birth certificate is sufficient;
- (2) A copy of a picture identification card for each adult contemplated to reside in the home;
- (3) If any adults in the home are enrolled in post-secondary education, verification of enrollment in the form of a financial aid award letter or other documentation directly from the school; and
- (4) If an adult in the household is the custodial parent/guardian of a minor, a copy of the court documents which awarded such placement.

(b) *Household Size/Needs.* At the time of application, the applicant shall indicate what size home they require: two (2) bedrooms; three (3) bedrooms; four (4) bedrooms; five (5) bedrooms and/or handicap accessibility.

(c) *Background Checks.* In order to ensure compliance with the eligibility requirements of the Landlord-Tenant law and these rules, Comprehensive Housing Division staff shall perform a background check on each adult in the household. Household adults are also subject to annual background checks upon the annual update pursuant to 4.8-5 and as may be determined to be necessary by the Comprehensive Housing Division staff to maintain the safety of the community.

4.5-2. *Notification of Eligibility, Placement on the Wait List.* When Comprehensive Housing Division staff completes its review of an application and determines the applicant(s) is eligible for the rent-to-own program, the staff shall determine whether there is a wait list for the rent-to-own program for the home size needed by the applicant.

(a) If there is a wait list established for the home size needed by the applicant, Comprehensive Housing Division staff shall place the applicant on the wait list based on the date and time stamp of the application. At such time, Comprehensive Housing Division staff shall provide the applicant with notice of their placement on the wait list and the requirement to update their application should anything change prior to a home becoming available. An applicant may request to be removed from the wait list at any time.

(b) If there is not a wait list established and there are homes available, move to the tenant selection process provided in section 4.6.

4.5-3. *Notification of Ineligibility.* If review of a complete submitted application reveals that an applicant is ineligible to participate in the rent-to-own program based on the Landlord-Tenant law and/or rules, the Comprehensive Housing Division staff shall notify the applicant of the cause of the ineligibility and how the applicant may become eligible in the future. At such time, Comprehensive Housing Division staff shall also inform the applicant of other housing opportunities offered by the Nation for which the applicant may be eligible, if applicable.

4.5-4. *Required Application Updates.* Applicants on the wait list are required to update the application, at a minimum, annually, but also whenever information submitted on the application has changed. Applicants that fail to complete the application update within the allotted timeframe will be removed from the wait list and required to re-apply for future consideration absent proof of extenuating circumstances, for which Comprehensive Housing Division staff may provide a grace period of a maximum of ten (10) calendar days. Should an updated application reveal that an applicant has become ineligible for the rent-to-own program, Comprehensive Housing Division staff shall remove the applicant from the wait list and provide the applicant notice of the cause for ineligibility.

## **4.6. Tenant Selection**

4.6-1. *Available Rent-to-Own Homes.* When a rent-to-own home becomes available, the Comprehensive Housing Division staff shall preliminarily select a tenant based on the first applicant on the wait list for the available home size.

4.6-2. *Notice of Tenant Selection.* When an applicant is selected for a unit in accordance with this section, the Comprehensive Housing Division staff shall provide the applicant with notice of tenant selection. The notice, at a minimum, shall include the address of the home, the estimated monthly payment required (based on the applicant's reported income), and a requirement that the applicant respond within fifteen (15) calendar days to accept/reject the home on a rent-to-own basis.

(a) *Failure to Respond or Rejecting a Home.* If a home is rejected for any reason other

than that the applicant would like to wait for a different home to become available, or, if the applicant fails to respond to the notice, Comprehensive Housing Division staff shall remove the applicant from the wait list. For applicants that reject a home in order to wait for a different home to become available on a rent-to-own basis, Comprehensive Housing Division staff shall replace applicant on the waitlist in their same spot.

(b) *Accepting a Rental Premise.*

(1) *Timeframe for Completing the Rent-to-Own Agreement and Taking Occupancy.* Applicants that have accepted a home from the rent-to-own program have five (5) calendar days from the date the home is move-in ready to:

(A) Reconfirm that they remain eligible for the rent-to-own program;

(B) Pay the first month's payment; and

(C) Execute the rent-to-own agreement and all required supplemental forms, provided that the agreement may not be executed until (A) and (B) are complete.

(2) *Taking Occupancy.* The Comprehensive Housing Division shall provide the tenant with keys to the home upon execution of the rent-to-own agreement. As such time, the Comprehensive Housing Division staff shall provide the tenant with a check-in sheet and notice the tenant that he/she has seven (7) calendar days from the date the tenant takes occupancy to complete the check-in sheet and submit it to the Comprehensive Housing Division.

#### **4.7. Rent-to-Own Loans**

4.7-1. *Rent-to-Own Loans.* The Comprehensive Housing Division shall require tenants in the rent-to-own program to make monthly payments towards the principal of their loan as documented in the rent-to-own agreement. A rent-to-own loan provides that title to the premise remains in the Comprehensive Housing Division's name until the tenant has, in combination with federal subsidies, paid the principal in full, at which time title to the premise is conveyed to the tenant and the tenant thereby becomes a homeowner. At the time of conveyance to the homeowner, the Comprehensive Housing Division shall refer to homeowner to the Division of Land Management to secure a residential lease for the land upon which the home is located.

4.7-2. *Rent-to-Own Payments.* Rent-to-Own payments are allocated one hundred percent (100%) towards the principal; there is no interest assessed on a rent-to-own loan. The Comprehensive Housing Division staff shall set the household's required monthly principle payment based on the household's income in accordance with the following:

(a) *Payment Amount.* The household's principal payment responsibility must be between fifteen percent (15%) and thirty percent (30%) of the household's adjusted gross income based on the income calculation requirements provided in section 4.4-3. Principal payments may not exceed the fair market rents of the subject premise as determined by the data for Outagamie County. The tenant shall select a payment plan based on fifteen percent (15%), twenty (20%), twenty-five percent (25%) or thirty percent (30%) of the household's adjusted gross income. Once selected, a payment plan may not be modified, provided that at any time the tenant may pay more towards the principal than what is required by the payment plan. Adjusted gross income means the annual household income remaining after the Comprehensive Housing Division staff applies the following deductions:

(1) *Dependent Deduction.* A deduction of \$480.00 from annual income for each

household minor dependent or adult dependent where the adult dependent is either a full-time student or a person with disabilities.

(2) *Elder and/or Disabled Deduction.* A total deduction of \$400.00 from annual income for a household in which:

(A) A household member is sixty-two (62) years of age or older; and/or

(B) A household member is a person with a disability.

(3) *Medical and Attendant Expenses.* For a household qualifying under 2.7-2(a)(2), a deduction for medical expenses<sup>5</sup> that are in excess of three percent (3%) of annual income and all expenses for live-in periodic attendant care assistance or apparatus to the extent necessary to enable a member of the family to be employed.

(4) *Child Care Expenses.* A deduction for reasonable child care expenses from annual income if the child care:

(A) Enables an adult household member to seek employment activity, be gainfully employed, or further his/her education; and

(B) Expenses are not reimbursed.

(5) *Child Support for a Household Minor.* A deduction for the full amount of child support paid by a household member for a household minor (i.e. when the parent paying child support lives in the same household as the child for which the parent is paying child support).

(6) *Earned Income of Minors.* A deduction in the amount of any earned income of any minor household member.

(7) *Travel Expenses for Employment or Education-Related Travel.* A maximum deduction of \$25.00 per week for travel expenses for employment or education related travel.

(b) *Administrative Fee.* The Comprehensive Housing Division shall assess a monthly administrative fee of one hundred dollars (\$100.00) per month in addition to any required principal payment.

(d) *Federal Subsidy.* The Comprehensive Housing Division staff shall subsidize the tenant's monthly payment responsibilities based on thirty percent (30%) of the assessed value of the home.

(e) *Loan Duration.* Based on the payment plan selected by the tenant, the Comprehensive Housing Division shall calculate the loan duration based on the number of months required to satisfy the principal in full, less the amount of the federal subsidy.

4.7-3. *Financial Hardship Recovery Agreements.* Should an adjustment to the tenant's income result in the required monthly principal payment exceeding thirty percent (30%) of the household's monthly gross income, the household becomes eligible for a financial hardship recovery agreement. Such agreements will adjust the required monthly principal payment to a manageable amount and may also adjust home improvement loan required payments, provided that the administrative fee may not be waived in any circumstance. Upon entering a financial hardship recovery agreement, the rent-to-own agreement and, if applicable, the home improvement loan, shall be amended to extend the loan duration based on the timeframe required to repay the total amount of the difference between the agreement payment required by the tenant selected payment plan and the adjusted payments.

(a) *Financial Hardship Recovery Agreement Duration.* Financial Hardship Recovery

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<sup>5</sup> Medical expenses are those identified in Title VII, Section IV of NAHASDA.

agreements shall be between a minimum of six (6) months and a maximum of twelve (12) months in duration. Any financial hardship recovery agreement entered for less than the maximum of a twelve (12) month period may be extended, provided that such extension may not cause the total agreement duration to exceed twelve (12) months. The rent-to-own loan duration shall be extended based on the timeframe required to repay the total amount of the difference between the rent-to-own agreement payment required by the tenant selected payment plan and the adjusted payments.

(b) *Maximum Hardship Recovery Agreements.* Throughout the life of the loan, a tenant is eligible for a maximum of three (3) financial hardship recovery agreements, provided that tenants are not eligible for a new financial hardship recovery agreement until one (1) year has lapsed since the prior financial hardship recovery agreement expired, including any amendments thereof.

(c) *Inability to Pay Following a Financial Hardship Recovery Agreement.* In the event a household is not able to recover within the agreement period and is not able to begin making full payments based on the tenant selected payment plan in the rent-to-own agreement, the Comprehensive Housing Division shall initiate eviction and termination proceedings. In the event of eviction and termination, the amounts paid by tenant into the loan are forfeited to the Comprehensive Housing Division as rent compensation for the tenancy. Any damages to the home may be assessed against the tenant as part of the eviction and termination proceeding.

4.7-4. *Home Improvement Loan.* Tenants are encouraged to maintain savings to cover any unanticipated housing related repairs that may arise. In order to assist tenants in the case of emergency and to make home improvements, tenants may borrow against their principal payment account with a home improvement loan. Tenants are responsible for paying the full home improvement loan in addition to the original principal amount; a home improvement loan reduces the principal payment account balance by the full value of the home improvement loan. The tenant shall select a payment plan where the maximum duration for the home improvement loan shall be one (1) year for each one thousand dollars (\$1,000) borrowed with a maximum of twenty-five thousand dollars (\$25,000) available under a home improvement loan.

(a) Home improvement loans are available for any home improvement fixed to the structure as well as unattached garages. Available improvements include, but are not limited to repair/replacement/purchase of the following:

- (1) Furnace or other primary heating source;
- (2) Windows;
- (3) Doors;
- (4) Roofing;
- (5) Siding;
- (6) Insulation;
- (7) Central air system;
- (8) Hot water heater;
- (9) Foundation;
- (10) Garage (attached or unattached);
- (11) Deck;
- (12) Porch;
- (13) Plumbing;
- (14) Entry/room addition; and/or

(15) Electrical.

(b) Tenants borrowing under the home improvement loan are required to submit a minimum of three (3) bids to the Comprehensive Housing Division for the work sought to be completed with loan funds. All payments issued pursuant to a home improvement loan shall be paid directly to the vendor by the Comprehensive Housing Division and shall require a twenty-five percent (25%) retainage to be paid upon completion via check issued in the name of both the tenant and the vendor.

(c) In order to be eligible for a home improvement loan, the tenant must:

- (1) Have been in the home for a minimum of five (5) years;
- (2) Not have had their home conveyed;
- (3) Be current with their rent-to-own agreements principal payments; and
- (4) Not have any an existing balance for any prior home improvement loan.

(d) A home improvement loan is an extension of the rent-to-own agreement; as such, the Comprehensive Housing Division may institute an eviction and termination of the home for a default of the home improvement loan.

(e) Upon approving a home improvement loan, the Comprehensive Housing Division staff shall work with tenants to teach home ownership skills by meeting with the tenant to:

- (1) Discuss what to look for when soliciting bids;
- (2) Review bids obtained with the tenant and discuss the merits of each bid and what the Comprehensive Housing Division considers when selecting vendors for similar services; and
- (3) Reviewing the work upon completion and discussing the things the Comprehensive Housing Divisions considers prior to issuing final payment to a vendor for similar services.

#### **4.8. Annual Inspection and Update**

4.8-1. *Annual Inspections.* Comprehensive Housing Division staff shall schedule annual inspections for each rent-to-own property.

4.8-2. *Inspection Checklist.* Comprehensive Housing Division staff completing the annual inspection shall use the checklist that is approved by the Comprehensive Housing Division director. Upon completion of the inspection, Comprehensive Housing Division staff shall request that the tenant(s) sign the completed checklist.

4.8-3. *Damages.* Tenants are required to repair any damages to the rental premises discovered during the annual inspection that do not amount to normal wear and tear and are required to make any improvements necessary to maintain the integrity the property and the health and safety of the occupants of the premises. In the event such repairs and/or improvements are not completed within the timeframe provided by the Comprehensive Housing Division, the Comprehensive Housing Division may complete the repairs and/or improvements and assess the costs to the tenant and a penalty fee of ten percent (10%) of the actual costs. The Comprehensive Housing Division may offer the tenant a payment agreement to cover such costs.

4.8-4. *Immediate Notice of Change in Household Composition and/or Income.* Tenants shall immediately notify the Comprehensive Housing Division of any change in the tenant's household composition and/or income, regardless of the date scheduled for the annual update. A change in household income may cause a change in the amount of monthly principal payment required.

4.8-5. *Annual Update.* On an annual basis the tenant shall provide an update to the Comprehensive Housing Division which demonstrates that the tenant continues to meet the requirements of section 4.4-1 and 4.4-7. If the tenant fails to continue meeting these requirements, the Comprehensive Housing Division may begin eviction and termination proceedings.

4.8-6. *Ineligibility Due to Annual Update.* Comprehensive Housing Division staff shall provide tenants that become ineligible to participate in the income-based rent to own program based on a renewal or update of household information with notice specifying the cause of the ineligibility.

(a) *Ineligibility Due to Renewal.* In circumstances where the tenant learns of ineligibility as part of the annual renewal, Comprehensive Housing Division staff shall include in the notice of ineligibility that renewal of the rent to own agreement is not available at such time and that the tenant is entitled to a minimum of a thirty (30) day notice to cure, by reinstating eligibility, or vacate.

(b) *Ineligibility Due to an Update of Household Information.* In circumstances where the tenant learns of ineligibility as part of an update of household information, Comprehensive Housing Division staff shall include in the notice of ineligibility the warning of potential termination in accordance with the rent to own agreement. In the event the tenant is unable to or fails reinstate their eligibility in accordance with the timeline provided in the notice, the Comprehensive Housing Division shall permit the tenant to remain in the unit for the longer of (1) the duration of the rental agreement or (2) ninety (90) calendar days from the date of the notice of ineligibility.

(1) If the tenants' circumstances result in the tenant completing the term of the rental agreement, eligibility shall be reconsidered at the time of the annual renewal. If the tenant remains ineligible at the time of renewal, article 2.8-6(a) applies, excluding 2.8-6(a)(1).

(2) If the tenants' circumstances result in the tenant receiving a thirty (30) calendar day notice to cure or ninety (90) calendar day notice to vacate, the tenant shall enter a limited term rental agreement to cover any time which exceeds the current rental agreement.

(c) *Limited Term Rental Agreements.* Limited term rental agreements are available in accordance with article 2.8-6(a)(1) and 2.8-6(b)(2) of these rules and section 710.9-4 of the Landlord-Tenant law. At a minimum, limited term rental agreement shall include:

(1) The date of the original notice of ineligibility;

(2) An explanation that the tenant has thirty (30) calendar days to reinstate eligibility;

(3) As applicable, an explanation that if eligibility is not timely reinstated, that the limited term rental agreement takes the place of the thirty (30) calendar day notice to cure or vacate required by the Eviction and Termination law; and

(4) An explanation that if eligibility is not timely reinstated, the rental unit will be reclaimed with locks being changed on the ninety-first (91<sup>st</sup>) day from the date of the original notice of ineligibility.

#### **4.9. Rent to Own Agreement Cancellation**

4.9-1. *Two Week Notice Required.* Tenants wishing to cancel a rent to own agreement are requested to provide the Comprehensive Housing Division with a minimum of two (2) weeks of notice.



4.9-2. *Prorated Rent.* In the event of cancellation of a rent to own agreement or abandonment of the rental premises, the Comprehensive Housing Division staff shall prorate the required last month's rent payment based upon the greater of the following:

- (a) The number of calendar days the unit was occupied in the last month; or
- (b) Two (2) weeks from the date of cancellation or the date the Comprehensive Housing Division learns of abandonment.

*End.*

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Original effective date:

## **Summary Report for:** Income Based Rent to Own Program Eligibility, Selection, and Other Requirements

Original effective date: N/A

Amendment effective date: N/A

**Name of Rule:** Income Based Rent to Own Program Eligibility, Selection, and Other Requirements

**Name of law being interpreted:** Landlord-Tenant Law

**Rule Number:** 4

**Other Laws or Rules that may be affected:** Eviction and Termination

**Brief Summary of the proposed rule:** This rule provides program requirements including the following:

- The program's eligibility requirements;
- Application process and wait list requirements;
- The process for tenant selection;
- Requirements for setting rents;
- The requirements related to rent to own loans, including financial hardship recovery agreements and home improvement loans; and
- The requirements for annual inspections, updates and agreement cancellation.

**Statement of Effect:** See Attached.

**Financial Analysis:** See Attached.

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**Note:** In addition- the agency must send a written request to each entity which may be affected by the rule- asking that they provide information about how the rule would financially affect them.

*The agency must include each entity's response in the financial analysis. If the agency does not receive a response within 10 business days after the request is made, the financial analysis can note which entities did not provide a response.*



## **Statement of Effect**

### ***Landlord-Tenant Rule No.4 – Income Based Rent to Own Program Eligibility, Selection and Other Requirements***

#### ***Summary***

This rule provides additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division's income-based homeownership program.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*

#### ***Analysis by the Legislative Reference Office***

The Landlord-Tenant law ("the Law") confers administrative rulemaking authority to the Comprehensive Housing Division and the Oneida Land Commission as authorized by the Administrative Rulemaking law. [see *Landlord-Tenant law section 611.4*]. The Law states that the Comprehensive Housing Division shall provide residential rental programs to low-income members of the Nation and their families. [see *Landlord-Tenant law section 611.4-1*]. The Oneida Land Commission and the Comprehensive Housing Division are required to jointly establish rules naming said programs and providing the specific requirements and regulations that apply to each program. [see *Landlord-Tenant law section 611.4-1*]. Additionally, the Land Commission and the Comprehensive Housing Division are required to jointly develop rules governing the selection of applicants for the issuance of rental agreements. [see *Landlord-Tenant law section 611.4-3*]. Oneida Business Committee Resolution BC-10-12-16-D provides that for purposes of this law, the Comprehensive Housing Division means the Oneida Housing Authority for income-based rental agreements. The Law also provides where such rental requirements relate solely to premises administered pursuant to federal funding, the Comprehensive Housing Division has sole authority. Accordingly, the Comprehensive Housing Division has sole rulemaking authority for these rules.

Landlord-Tenant Rule No. 4 - Income Based Rent to Own Program Eligibility, Selection and Other Requirements ("the Rule") provides additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division's income-based homeownership program. The mission of the income-based homeownership program is to offer members of the Nation homeownership opportunities without requiring credit checks or down payments which offers payment plans that may include federal subsidy, is free of interest, and with payment amounts based on household income.

The Rule conflicts with Oneida Business Committee Resolution BC-12-23-09-A, the Oneida Housing Authority Admissions and Occupancy Policy (the "Policy"). [see *Landlord-Tenant Rule No. 4 section 4.4-5 and 4.4-6*]. This resolution contains social eligibility criteria for Oneida Housing Authority housing programs.

One criteria used in the Policy is that debt owed to entities outside of the Oneida Housing Authority is not considered when determining eligibility for Oneida Housing Authority housing programs. The Rule conflicts with the Policy because the Rule does not allow an applicant for a rental agreement to have a balance greater than two hundred dollars (\$200) owed to any utility provider and may not have any prior debt owed to the Comprehensive Housing Division, which includes Elder Services and the Division of Land Management in addition to the Oneida Housing Authority. *[see Landlord-Tenant Rule No. 4 section 4.4-5].*

Another criteria used in the Policy is debt related evictions from a non-Oneida Housing Authority entity are not allowed to be used to disqualify an applicant from participating in an Oneida Housing Authority housing program. The Rule conflicts with the Policy because the Rule states that an applicant that has had a rental agreement with the Comprehensive Housing Division subject to an eviction and termination within two (2) years from the date of the application is not eligible to participate in the income-based rent-to-own program. *[see Landlord-Tenant Rule No. 4 section 4.4-6].* The Rule looks at rental agreements subject to evictions with the Division of Land Management and Elder Services in addition to just the Oneida Housing Authority.

### ***Conclusion***

A conflict exists between this Rule and the Oneida Business Committee Resolution BC-12-23-09-A, Oneida Housing Authority Admissions and Occupancy Policy.

The language in Resolution BC-12-23-09-A would apply to income based rent-to-own programs in addition to other Oneida Housing Authority rental programs. It is recommended that either the rule is amended or the resolution is amended or repealed to eliminate this conflict.

**Financial Analysis for: Income Based Rent to Own Program Eligibility, Selection, and Other Requirements**

Type of Cost	Description/Comment	Dollar Amount
Start Up Costs	N/A – Home Ownership programs already exists. Rule No. 4 modifies program administration	\$0.00
Personnel	N/A – staff dedicated to home ownership program is already in place	\$0.00
Office	N/A – Current office configuration already accommodates home ownership program	\$0.00
Documentation Costs	N/A – No additional costs projected to be different that existing program	\$0.00
Estimate of time necessary for an individual or agency to comply with the rule after implementation		N/A
Other, please explain	<p><b>Rule No. 4, Section 4.7-2(a) Payment Amount – Line 256.</b></p> <p>Monthly plans will now offer a 15%, 20%, 25%, or 30% of adjusted gross income payment, in addition to an administrative fee.</p> <p>Current plans offer a 15% of adjusted gross income payment, including the administrative fee.</p> <p>Changes in monthly payments plans will increase program revenue. The amount is unknown due to launching of a new program, and no immediate plans to construct homes specifically for the Rent to Own Program.</p>	Unknown
	<p><b>Rule No. 4, Section 4.7-2(d) Federal Subsidy – Line 296.</b></p> <p>The amount of federal subsidy is being standardized to 30% of the homes construction cost.</p> <p>Standardizing the subsidy will increase program revenue, generating program income that will be used toward future construction for the program.</p> <p>The amount of increased program revenue is unknown due to launching of a new program and no immediate plans to construct homes specifically for the Rent to Own Program.</p>	

	<p><b>Financial Comparison Model</b></p> <p><u>Scenario – Current Model</u></p> <ul style="list-style-type: none"> <li>• New House Value = \$280,000</li> <li>• Ghost Payment (Value/180 months) = \$1,555</li> <li>• Min. Household Income \$2,500 monthly</li> <li>• Payment = \$375 (\$275 principal &amp; \$100 admin. Fee) - 15% of adjusted monthly income.</li> <li>• 15 year agreement satisfaction</li> <li>• Principal paid - \$49,500</li> <li>• Federal Subsidy = \$230,500</li> </ul> <p><u>Scenario – New Program Model</u></p> <ul style="list-style-type: none"> <li>• New House Value = \$280,000</li> <li>• Federal Subsidy = \$84,000 (30% of cost)</li> <li>• Loan Amount – \$196,000</li> <li>• Min. Household Income \$2,500 monthly</li> <li>• Payment = \$500 (20%) principal + \$100 admin fee</li> <li>• Principal paid = \$196,000</li> <li>• Agreement satisfaction = 32.6 years</li> </ul> <p><u>Program Benefits</u></p> <ul style="list-style-type: none"> <li>• No credit check</li> <li>• No interest</li> <li>• Federal Subsidy</li> <li>• Payments based on household income</li> <li>• Significant home owner total costs savings over conventional mortgage</li> </ul>	
Total	Annual Net Revenue	

## Oneida Housing Department

**Memorandum**

To: Legislative Operating Committee  
From: Dale Wheelock, Executive Director Housing  
Date: June 7, 2017  
Subject: Approval of Landlord-Tenant Rule No.4

I am approving the proposed Rule #4 – Income Based Rent to Own Program Eligibility, Selection and Other Requirements. This approval is in context as it relates to Title 6. Property and Land – Chapter 611 Landlord – Tenant Law and the delegation of Administrative Rulemaking Authority provided in section 611.4.1

**Signature Approval**

Dale P. Wheelock Date 06/07/17  
Dale Wheelock  
Executive Director Oneida Housing Authority



NOTICE OF  
**PUBLIC MEETING**

TO BE HELD  
**May 18, 2017 at 3:00 P.M.**

IN THE  
**OBC Conference Room  
2nd Floor, Norbert Hill Center  
N7210 Seminary Road, Oneida, WI 54155**

In accordance with the Administrative Rulemaking Law, the Oneida Housing Authority (OHA) is hosting this Public Meeting to gather feedback from the community regarding the following rule(s).

**TOPIC: Landlord-Tenant Law Rule #4 —  
Income Based Rent to Own Program  
Eligibility, Selection & Other Requirements**

**This is a proposal to adopt a rule which would govern the rent to own program by providing:**

- ◆ The program's eligibility requirements;
- ◆ Application process and wait list requirements;
- ◆ The process for tenant selection ;
- ◆ Requirements for setting rents;
- ◆ The requirements related to rent to own loans, including financial hardship recovery agreements and home improvement loans; and
- ◆ The requirements for annual inspections, updates and agreement cancellation.

To obtain copies of the Public Meeting documents for this proposal, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings).

**PUBLIC COMMENT PERIOD  
OPEN UNTIL May 25, 2017**

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to [Enter Authorized Agency Name Here] by U.S. mail, interoffice mail, e-mail or fax.

**Oneida Housing Authority  
2913 Commissioner Street, Oneida, WI 54155  
jhill7@oneidanation.org  
Phone: 920-869-2227  
FAX: 920-869-2836**



## Title 6. Property and Land – Chapter 611

### LANDLORD-TENANT

#### Rule # 4 – Income Based Rent to Own Program Eligibility, Selection and Other Requirements

- 4.1. Purpose and Effective Date
- 4.2. Adoption and Authority
- 4.3. Definitions
- 4.4. Eligibility Requirements
- 4.5. Application Process and Wait List
- 4.6. Tenant Selection
- 4.7. Setting Rents
- 4.8. Annual Inspection and Background Check
- 4.9. Rent to Own Agreement Cancellation

#### 4.1. Purpose and Delegation

4.1-1. *Purpose.* The purpose of this rule is to provide additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division's income-based homeownership program. The mission of the income-based homeownership program is to offer Tribal members homeownership opportunities without requiring credit checks or down payments which offers payment plans that may include federal subsidy, is free of interest, and with payment amounts based on household income. It is always the Comprehensive Housing Division's policy to develop, maintain, and operate affordable housing in safe, sanitary and healthy environments within the reservation.

4.1-2. *Delegation.* The Landlord-Tenant law delegated the Comprehensive Housing Division and Land Commission joint rulemaking authority pursuant to the Administrative Rulemaking law. However that delegation excluded the Land Commission from having joint authority where the rules relate solely to premises administered pursuant to federal funding. Accordingly, the Comprehensive Housing Division has sole rulemaking authority for these rules.

#### 4.2. Adoption and Authority

4.2-1. This rule was adopted by the Comprehensive Housing Division in accordance with the procedures of the Administrative Rulemaking law.

4.2-2. This rule may be amended or repealed by the approval of the Comprehensive Housing Division pursuant to the procedures set out in the Administrative Rulemaking law.

4.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

4.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure or other regulation, the provisions of this rule control.

4.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Landlord-Tenant law, provided that tenants are currently subject to the Mutual Help Agreement shall remain subject to the Mutual Help Agreement with this rule applying to all future rent-to-own agreements entered into by the Comprehensive Housing Division.

#### 4.3. Definitions

4.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

(a) “Comprehensive Housing Division” means the entity responsible for housing matters specifically related to rent-to-own agreements as defined by Oneida Business Committee Resolution.<sup>1</sup>

(b) “Household” means all persons residing at the premises.

(c) “HUD” means the United States Department of Housing and Urban Development.

(b) “Landlord” means the Nation in its capacity to rent real property subject to a rental agreement.

(c) “Nation” means the Oneida Nation.

(d) “Premises” means the property covered by a rent-to-own agreement, including not only the real property and fixtures, but also any personal property furnished by the landlord pursuant to a rental agreement.

(e) “Rent-to-Own Agreement” means a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose.

(f) “Tenant” means the person granted the right to use or occupy a premise pursuant to a rental agreement.

(g) “Tribal member” means an enrolled member of the Nation.

#### **4.4. Eligibility Requirements**

4.4-1. *Tribal Member Status.* At least one (1) of the heads of household required to sign the rent-to-own agreement is required to be a Tribal member. Comprehensive Housing Division staff shall verify enrollment status by either requiring a copy of the Tribal Identification Card or requesting verification from the Trust Enrollment Department.

4.4-2. *Dependent Minor.* In order to be eligible there must be a minimum of one (1) minor in the household composition that is a full-time dependent of a head of household at the time of application.

4.4-3. *Maximum Income.* Pursuant to NAHASDA, in order to be eligible for an income-based rent-to-own agreement, the household must qualify as low income at the time of initial occupancy. In order to qualify as low-income, applicants’ household income may not exceed eighty percent (80%) of the regional gross annual income based on the data from Outagamie County.<sup>2</sup> For the purposes of this section, gross annual income is all income from any and all sources of income from all adult members of the household anticipated to be received in an upcoming twelve (12) month period unless specifically excluded from income in this section. Applicants shall provide Comprehensive Housing Division staff written verification of income.

(a) For purposes of calculating income to determine eligibility, the Comprehensive Housing Division staff shall include per capita payments to the extent that receipt of per capita payment may be verified for the prior year based on the tax return.

(b) For the purpose of calculating income to determine eligibility, the Comprehensive Housing Division staff shall include in annual income gross income from household

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<sup>1</sup> See BC Resolution 10-12-16-D providing that for purposes of the Landlord-Tenant law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

<sup>2</sup> Pursuant to resolution BC-01-25-12-A, Outagamie County is designated as the data source for collecting regional gross income for determining low-income housing eligibility because the income in that area is generally higher than Brown County’s and results in more persons being eligible based on the income requirements.

assets where net household assets are defined in accordance with 24 CFR 5.603.<sup>3</sup>

(b) For purposes of calculating income to determine eligibility, the Comprehensive Housing Division staff may not include the following:

- (1) Income from employment of any household minors;
- (2) Payments received for the care of foster children and/or handicapped/mentally incompetent adults;
- (3) Lump-sum additions to household assets including, but not limited to, inheritances, insurance payments, capital gains, and settlements for personal and/or property losses, excluding payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay, which are included in income;
- (4) Amounts received by the household that is specifically for, or in reimbursement of, the cost of medical expenses for any member of the household;
- (5) Income of a live-in medical aide;
- (6) Any amounts received as student financial assistance;
- (7) Income of any adult household members that are students, other than the head of household, in excess of \$480 annually; the first \$480 of annual income received by an adult student household member shall be included as income;
- (8) Payments made to any member of the household serving in the armed forces for exposure to hostile fire;
- (9) Amounts received under training programs funded by HUD;
- (10) Amounts received by persons with disabilities, which amounts are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because such amounts are set aside for use under a Plan for Achieving Self-Support;
- (11) Temporary, nonrecurring and/or sporadic income (including gifts);
- (12) Adoption assistance payments that exceed \$480 annually; the first \$480 of annual adoption assistance payments shall be included as income;
- (13) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts;
- (14) Amounts paid by a state agency to a member of the household with a developmental disability to offset the cost of services and/or equipment needed to keep the developmentally disabled member living in the household; and
- (15) Amounts specifically excluded from income by any applicable federal statute and/or regulation, specifically those identified in the Federal Register.<sup>4</sup>

4.4-4. *Minimum Income.* Applicants shall have a minimum income of \$30,000 at the time of application.

4.4-5. *Outstanding Debts.* Applicants for a rental agreement may not have a balance greater than two hundred dollars (\$200) owed to any utility provider and may not have any prior debt owed to the Comprehensive Housing Division.

4.4-6. *Prior Comprehensive Housing Division Eviction.* Applicants that have had a rental agreement with the Comprehensive Housing Division subject to an eviction and termination

<sup>3</sup> See HUD Occupancy Handbook, Exhibit 5-2: Assets.

<sup>4</sup> The most recent notice of federally required exclusions was published on December 14, 2012 and can be found in the Federal Register at 77 FR 74495.

within two (2) years from the date of the application are not eligible to participate in the income-based rent-to-own program.

4.4-7. *Criminal Convictions*. Applicants with any of the following types of convictions are not eligible for participation in the rent-to-own program, provided that the Pardon and Forgiveness law may provide an exception to the conditions contained in this section:

- (a) A drug conviction within three (3) years from the date of application;
- (b) A felony conviction within five (5) years from the date of application; and/or
- (c) A criminal conviction based upon an act of violence within two (2) years from the date of the application.

4.4-8. *Homeowner Status*. Applicants that are current homeowners are not eligible for participation in the income-based rent-to-own program.

4.4-9. *Current Comprehensive Housing Division Tenants*. Applicants that are current tenants of the Comprehensive Housing Division are required to be in compliance with the rental program agreement and any accompanying rules in order to be eligible for participation in the income-based rent-to-own program.

#### **4.5. Application Process and Wait List**

4.5-1. *Applying*. Persons wishing to participate in the income-based rent-to-own program shall complete the Comprehensive Housing Division rent-to-own agreement application and any other accompanying forms required based on the income-based program eligibility requirements. The Comprehensive Housing Division staff may not consider any applications for selection and/or placement on the wait list until the application and all accompanying forms are complete. Upon receipt of a completed application, including all supplementary forms, Comprehensive Housing Division staff shall date and time stamp the application. If, regardless of a complete application submittal, additional information is required to determine eligibility, the Comprehensive Housing Division staff shall request such information and maintain the application submittal date provided that the applicant responds to the information requests in a reasonably timely fashion.

(a) *Household Composition Form*. The Comprehensive Housing Division staff shall require applicants to the income-based homeownership program to complete a Household Composition Form which provides the full name, age and date of birth of each person contemplated to reside in the home. In order to verify such information, the Comprehensive Housing Division staff shall require that applicants submit the following with the Household Composition Form:

- (1) Copies of social security cards for each person contemplated to reside in the home, provided that for newly born babies that have not yet been issued a social security card a birth certificate is sufficient;
- (2) A copy of a picture identification card for each adult contemplated to reside in the home;
- (3) If any adults in the home are enrolled in post-secondary education, verification of enrollment in the form of a financial aid award letter or other documentation directly from the school; and
- (4) If an adult in the household is the custodial parent/guardian of a minor, a copy of the court documents which awarded such placement.

(b) *Household Size/Needs*. At the time of application, the applicant shall indicate what size home they require: two (2) bedrooms; three (3) bedrooms; four (4) bedrooms; five (5) bedrooms and/or handicap accessibility.

(c) *Background Checks.* In order to ensure compliance with the eligibility requirements of the Landlord-Tenant law and these rules, Comprehensive Housing Division staff shall perform a background check on each adult in the household. Household adults are also subject to annual background checks upon the annual update pursuant to 4.8-5 and as may be determined to be necessary by the Comprehensive Housing Division staff to maintain the safety of the community.

4.5-2. *Notification of Eligibility, Placement on the Wait List.* When Comprehensive Housing Division staff completes its review of an application and determines the applicant(s) is eligible for the rent-to-own program, the staff shall determine whether there is a wait list for the rent-to-own program for the home size needed by the applicant.

(a) If there is a wait list established for the home size needed by the applicant, Comprehensive Housing Division staff shall place the applicant on the wait list based on the date and time stamp of the application. At such time, Comprehensive Housing Division staff shall provide the applicant with notice of their placement on the wait list and the requirement to update their application should anything change prior to a home becoming available. An applicant may request to be removed from the wait list at any time.

(b) If there is not a wait list established and there are homes available, move to the tenant selection process provided in section 4.6.

4.5-3. *Notification of Ineligibility.* If review of a complete submitted application reveals that an applicant is ineligible to participate in the rent-to-own program based on the Landlord-Tenant law and/or rules, the Comprehensive Housing Division staff shall notify the applicant of the cause of the ineligibility and how the applicant may become eligible in the future. At such time, Comprehensive Housing Division staff shall also inform the applicant of other housing opportunities offered by the Nation for which the applicant may be eligible, if applicable.

4.5-4. *Required Application Updates.* Applicants on the wait list are required to update the application, at a minimum, annually, but also whenever information submitted on the application has changed. Applicants that fail to complete the application update within the allotted timeframe will be removed from the wait list and required to re-apply for future consideration absent proof of extenuating circumstances, for which Comprehensive Housing Division staff may provide a grace period of a maximum of ten (10) calendar days. Should an updated application reveal that an applicant has become ineligible for the rent-to-own program, Comprehensive Housing Division staff shall remove the applicant from the wait list and provide the applicant notice of the cause for ineligibility.

## **4.6. Tenant Selection**

4.6-1. *Available Rent-to-Own Homes.* When a rent-to-own home becomes available, the Comprehensive Housing Division staff shall preliminarily select a tenant based on the first applicant on the wait list for the available home size.

4.6-2. *Notice of Tenant Selection.* When an applicant is selected for a unit in accordance with this section, the Comprehensive Housing Division staff shall provide the applicant with notice of tenant selection. The notice, at a minimum, shall include the address of the home, the estimated monthly payment required (based on the applicant's reported income), and a requirement that the applicant respond within fifteen (15) calendar days to accept/reject the home on a rent-to-own basis.

(a) *Failure to Respond or Rejecting a Home.* If a home is rejected for any reason other

than that the applicant would like to wait for a different home to become available, or, if the applicant fails to respond to the notice, Comprehensive Housing Division staff shall remove the applicant from the wait list. For applicants that reject a home in order to wait for a different home to become available on a rent-to-own basis, Comprehensive Housing Division staff shall replace applicant on the waitlist in their same spot.

(b) *Accepting a Rental Premise.*

(1) *Timeframe for Completing the Rent-to-Own Agreement and Taking Occupancy.* Applicants that have accepted a home from the rent-to-own program have five (5) calendar days from the date the home is move-in ready to:

(A) Reconfirm that they remain eligible for the rent-to-own program;

(B) Pay the first month's payment; and

(C) Execute the rent-to-own agreement and all required supplemental forms, provided that the agreement may not be executed until (A) and (B) are complete.

(2) *Taking Occupancy.* The Comprehensive Housing Division shall provide the tenant with keys to the home upon execution of the rent-to-own agreement. As such time, the Comprehensive Housing Division staff shall provide the tenant with a check-in sheet and notice the tenant that he/she has seven (7) calendar days from the date the tenant takes occupancy to complete the check-in sheet and submit it to the Comprehensive Housing Division.

#### **4.7. Rent-to-Own Loans**

4.7-1. *Rent-to-Own Loans.* The Comprehensive Housing Division shall require tenants in the rent-to-own program to make monthly payments towards the principal of their loan as documented in the rent-to-own agreement. A rent-to-own loan provides that title to the premise remains in the Comprehensive Housing Division's name until the tenant has, in combination with federal subsidies, paid the principal in full, at which time title to the premise is conveyed to the tenant and the tenant thereby becomes a homeowner. At the time of conveyance to the homeowner, the Comprehensive Housing Division shall refer to homeowner to the Division of Land Management to secure a residential lease for the land upon which the home is located.

4.7-2. *Rent-to-Own Payments.* Rent-to-Own payments are allocated one hundred percent (100%) towards the principal; there is no interest assessed on a rent-to-own loan. The Comprehensive Housing Division staff shall set the household's required monthly principle payment based on the household's income in accordance with the following:

(a) *Payment Amount.* The household's principal payment responsibility must be between fifteen percent (15%) and thirty percent (30%) of the household's adjusted gross income based on the income calculation requirements provided in section 4.4-3. Principal payments may not exceed the fair market rents of the subject premise as determined by the data for Outagamie County. The tenant shall select a payment plan based on fifteen percent (15%), twenty (20%), twenty-five percent (25%) or thirty percent (30%) of the household's adjusted gross income. Once selected, a payment plan may not be modified, provided that at any time the tenant may pay more towards the principal than what is required by the payment plan. Adjusted gross income means the annual household income remaining after the Comprehensive Housing Division staff applies the following deductions:

(1) *Dependent Deduction.* A deduction of \$480.00 from annual income for each

household minor dependent or adult dependent where the adult dependent is either a full-time student or a person with disabilities.

(2) *Elder and/or Disabled Deduction.* A total deduction of \$400.00 from annual income for a household in which:

(A) A household member is sixty-two (62) years of age or older; and/or

(B) A household member is a person with a disability.

(3) *Medical and Attendant Expenses.* For a household qualifying under 2.7-2(a)(2), a deduction for medical expenses<sup>5</sup> that are in excess of three percent (3%) of annual income and all expenses for live-in periodic attendant care assistance or apparatus to the extent necessary to enable a member of the family to be employed.

(4) *Child Care Expenses.* A deduction for reasonable child care expenses from annual income if the child care:

(A) Enables an adult household member to seek employment activity, be gainfully employed, or further his/her education; and

(B) Expenses are not reimbursed.

(5) *Child Support for a Household Minor.* A deduction for the full amount of child support paid by a household member for a household minor (i.e. when the parent paying child support lives in the same household as the child for which the parent is paying child support).

(6) *Earned Income of Minors.* A deduction in the amount of any earned income of any minor household member.

(7) *Travel Expenses for Employment or Education-Related Travel.* A maximum deduction of \$25.00 per week for travel expenses for employment or education related travel.

(b) *Administrative Fee.* The Comprehensive Housing Division shall assess a monthly administrative fee of one hundred dollars (\$100.00) per month in addition to any required principal payment.

(d) *Federal Subsidy.* The Comprehensive Housing Division staff shall subsidize the tenant's monthly payment responsibilities based on thirty percent (30%) of the assessed value of the home.

(e) *Loan Duration.* Based on the payment plan selected by the tenant, the Comprehensive Housing Division shall calculate the loan duration based on the number of months required to satisfy the principal in full, less the amount of the federal subsidy.

4.7-3. *Financial Hardship Recovery Agreements.* Should an adjustment to the tenant's income result in the required monthly principal payment exceeding thirty percent (30%) of the household's monthly gross income, the household becomes eligible for a financial hardship recovery agreement. Such agreements will adjust the required monthly principal payment to a manageable amount and may also adjust home improvement loan required payments, provided that the administrative fee may not be waived in any circumstance. Upon entering a financial hardship recovery agreement, the rent-to-own agreement and, if applicable, the home improvement loan, shall be amended to extend the loan duration based on the timeframe required to repay the total amount of the difference between the agreement payment required by the tenant selected payment plan and the adjusted payments.

(a) *Financial Hardship Recovery Agreement Duration.* Financial Hardship Recovery

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<sup>5</sup> Medical expenses are those identified in Title VII, Section IV of NAHASDA.



agreements shall be between a minimum of six (6) months and a maximum of twelve (12) months in duration. Any financial hardship recovery agreement entered for less than the maximum of a twelve (12) month period may be extended, provided that such extension may not cause the total agreement duration to exceed twelve (12) months. The rent-to-own loan duration shall be extended based on the timeframe required to repay the total amount of the difference between the rent-to-own agreement payment required by the tenant selected payment plan and the adjusted payments.

(b) *Maximum Hardship Recovery Agreements.* Throughout the life of the loan, a tenant is eligible for a maximum of three (3) financial hardship recovery agreements, provided that tenants are not eligible for a new financial hardship recovery agreement until one (1) year has lapsed since the prior financial hardship recovery agreement expired, including any amendments thereof.

(c) *Inability to Pay Following a Financial Hardship Recovery Agreement.* In the event a household is not able to recover within the agreement period and is not able to begin making full payments based on the tenant selected payment plan in the rent-to-own agreement, the Comprehensive Housing Division shall initiate eviction and termination proceedings. In the event of eviction and termination, the amounts paid by tenant into the loan are forfeited to the Comprehensive Housing Division as rent compensation for the tenancy. Any damages to the home may be assessed against the tenant as part of the eviction and termination proceeding.

4.7-4. *Home Improvement Loan.* Tenants are encouraged to maintain savings to cover any unanticipated housing related repairs that may arise. In order to assist tenants in the case of emergency and to make home improvements, tenants may borrow against their principal payment account with a home improvement loan. Tenants are responsible for paying the full home improvement loan in addition to the original principal amount; a home improvement loan reduces the principal payment account balance by the full value of the home improvement loan. The tenant shall select a payment plan where the maximum duration for the home improvement loan shall be one (1) year for each one thousand dollars (\$1,000) borrowed with a maximum of twenty-five thousand dollars (\$25,000) available under a home improvement loan.

(a) Home improvement loans are available for any home improvement fixed to the structure as well as unattached garages. Available improvements include, but are not limited to repair/replacement/purchase of the following:

- (1) Furnace or other primary heating source;
- (2) Windows;
- (3) Doors;
- (4) Roofing;
- (5) Siding;
- (6) Insulation;
- (7) Central air system;
- (8) Hot water heater;
- (9) Foundation;
- (10) Garage (attached or unattached);
- (11) Deck;
- (12) Porch;
- (13) Plumbing;
- (14) Entry/room addition; and/or

(15) Electrical.

(b) Tenants borrowing under the home improvement loan are required to submit a minimum of three (3) bids to the Comprehensive Housing Division for the work sought to be completed with loan funds. All payments issued pursuant to a home improvement loan shall be paid directly to the vendor by the Comprehensive Housing Division and shall require a twenty-five percent (25%) retainage to be paid upon completion via check issued in the name of both the tenant and the vendor.

(c) In order to be eligible for a home improvement loan, the tenant must:

- (1) Have been in the home for a minimum of five (5) years;
- (2) Not have had their home conveyed;
- (3) Be current with their rent-to-own agreements principal payments; and
- (4) Not have any an existing balance for any prior home improvement loan.

(d) A home improvement loan is an extension of the rent-to-own agreement; as such, the Comprehensive Housing Division may institute an eviction and termination of the home for a default of the home improvement loan.

(e) Upon approving a home improvement loan, the Comprehensive Housing Division staff shall work with tenants to teach home ownership skills by meeting with the tenant to:

- (1) Discuss what to look for when soliciting bids;
- (2) Review bids obtained with the tenant and discuss the merits of each bid and what the Comprehensive Housing Division considers when selecting vendors for similar services; and
- (3) Reviewing the work upon completion and discussing the things the Comprehensive Housing Divisions considers prior to issuing final payment to a vendor for similar services.

#### **4.8. Annual Inspection and Update**

4.8-1. *Annual Inspections.* Comprehensive Housing Division staff shall schedule annual inspections for each rent-to-own property.

4.8-2. *Inspection Checklist.* Comprehensive Housing Division staff completing the annual inspection shall use the checklist that is approved by the Comprehensive Housing Division director. Upon completion of the inspection, Comprehensive Housing Division staff shall request that the tenant(s) sign the completed checklist.

4.8-3. *Damages.* Tenants are required to repair any damages to the rental premises discovered during the annual inspection that do not amount to normal wear and tear and are required to make any improvements necessary to maintain the integrity the property and the health and safety of the occupants of the premises. In the event such repairs and/or improvements are not completed within the timeframe provided by the Comprehensive Housing Division, the Comprehensive Housing Division may complete the repairs and/or improvements and assess the costs to the tenant and a penalty fee of ten percent (10%) of the actual costs. The Comprehensive Housing Division may offer the tenant a payment agreement to cover such costs.

4.8-4. *Immediate Notice of Change in Household Composition and/or Income.* Tenants shall immediately notify the Comprehensive Housing Division of any change in the tenant's household composition and/or income, regardless of the date scheduled for the annual update. A change in household income may cause a change in the amount of monthly principal payment required.

4.8-5. *Annual Update.* On an annual basis the tenant shall provide an update to the Comprehensive Housing Division which demonstrates that the tenant continues to meet the requirements of section 4.4-1 and 4.4-7. If the tenant fails to continue meeting these requirements, the Comprehensive Housing Division may begin eviction and termination proceedings.

4.8-6. *Ineligibility Due to Annual Update.* Comprehensive Housing Division staff shall provide tenants that become ineligible to participate in the income-based rent to own program based on a renewal or update of household information with notice specifying the cause of the ineligibility.

(a) *Ineligibility Due to Renewal.* In circumstances where the tenant learns of ineligibility as part of the annual renewal, Comprehensive Housing Division staff shall include in the notice of ineligibility that renewal of the rent to own agreement is not available at such time and that the tenant is entitled to a minimum of a thirty (30) day notice to cure, by reinstating eligibility, or vacate.

(b) *Ineligibility Due to an Update of Household Information.* In circumstances where the tenant learns of ineligibility as part of an update of household information, Comprehensive Housing Division staff shall include in the notice of ineligibility the warning of potential termination in accordance with the rent to own agreement. In the event the tenant is unable to or fails reinstate their eligibility in accordance with the timeline provided in the notice, the Comprehensive Housing Division shall permit the tenant to remain in the unit for the longer of (1) the duration of the rental agreement or (2) ninety (90) calendar days from the date of the notice of ineligibility.

(1) If the tenants' circumstances result in the tenant completing the term of the rental agreement, eligibility shall be reconsidered at the time of the annual renewal. If the tenant remains ineligible at the time of renewal, article 2.8-6(a) applies, excluding 2.8-6(a)(1).

(2) If the tenants' circumstances result in the tenant receiving a thirty (30) calendar day notice to cure or ninety (90) calendar day notice to vacate, the tenant shall enter a limited term rental agreement to cover any time which exceeds the current rental agreement.

(c) *Limited Term Rental Agreements.* Limited term rental agreements are available in accordance with article 2.8-6(a)(1) and 2.8-6(b)(2) of these rules and section 710.9-4 of the Landlord-Tenant law. At a minimum, limited term rental agreement shall include:

(1) The date of the original notice of ineligibility;

(2) An explanation that the tenant has thirty (30) calendar days to reinstate eligibility;

(3) As applicable, an explanation that if eligibility is not timely reinstated, that the limited term rental agreement takes the place of the thirty (30) calendar day notice to cure or vacate required by the Eviction and Termination law; and

(4) An explanation that if eligibility is not timely reinstated, the rental unit will be reclaimed with locks being changed on the ninety-first (91<sup>st</sup>) day from the date of the original notice of ineligibility.

#### **4.9. Rent to Own Agreement Cancellation**

4.9-1. *Two Week Notice Required.* Tenants wishing to cancel a rent to own agreement are requested to provide the Comprehensive Housing Division with a minimum of two (2) weeks of notice.

4.9-2. *Prorated Rent.* In the event of cancellation of a rent to own agreement or abandonment of the rental premises, the Comprehensive Housing Division staff shall prorate the required last month's rent payment based upon the greater of the following:

(a) The number of calendar days the unit was occupied in the last month; or

(b) Two (2) weeks from the date of cancellation or the date the Comprehensive Housing Division learns of abandonment.

*End.*

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Original effective date:

**Summary Report for:** Income Based Rent to Own Program Eligibility, Selection, and Other Requirements

Original effective date: N/A

Amendment effective date: N/A

**Name of Rule:** Income Based Rent to Own Program Eligibility, Selection, and Other Requirements

**Name of law being interpreted:** Landlord-Tenant Law

**Rule Number:** 4

**Other Laws or Rules that may be affected:** Eviction and Termination

**Brief Summary of the proposed rule:** This rule provides program requirements including the following:

- The program's eligibility requirements;
- Application process and wait list requirements;
- The process for tenant selection;
- Requirements for setting rents;
- The requirements related to rent to own loans, including financial hardship recovery agreements and home improvement loans; and
- The requirements for annual inspections, updates and agreement cancellation.

**Statement of Effect:** See Attached.

**Financial Analysis:** See Attached.

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**Note:** In addition- the agency must send a written request to each entity which may be affected by the rule- asking that they provide information about how the rule would financially affect them.

*The agency must include each entity's response in the financial analysis. If the agency does not receive a response within 10 business days after the request is made, the financial analysis can note which entities did not provide a response.*



## **Statement of Effect**

### ***Landlord-Tenant Rule No.4 – Income Based Rent to Own Program Eligibility, Selection and Other Requirements***

#### ***Summary***

This rule provides additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division's income-based homeownership program.

*Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office*

#### ***Analysis by the Legislative Reference Office***

The Landlord-Tenant law ("the Law") confers administrative rulemaking authority to the Comprehensive Housing Division and the Oneida Land Commission as authorized by the Administrative Rulemaking law. [see *Landlord-Tenant law section 611.4*]. The Law states that the Comprehensive Housing Division shall provide residential rental programs to low-income members of the Nation and their families. [see *Landlord-Tenant law section 611.4-1*]. The Oneida Land Commission and the Comprehensive Housing Division are required to jointly establish rules naming said programs and providing the specific requirements and regulations that apply to each program. [see *Landlord-Tenant law section 611.4-1*]. Additionally, the Land Commission and the Comprehensive Housing Division are required to jointly develop rules governing the selection of applicants for the issuance of rental agreements. [see *Landlord-Tenant law section 611.4-3*]. Oneida Business Committee Resolution BC-10-12-16-D provides that for purposes of this law, the Comprehensive Housing Division means the Oneida Housing Authority for income-based rental agreements. The Law also provides where such rental requirements relate solely to premises administered pursuant to federal funding, the Comprehensive Housing Division has sole authority. Accordingly, the Comprehensive Housing Division has sole rulemaking authority for these rules.

Landlord-Tenant Rule No. 4 - Income Based Rent to Own Program Eligibility, Selection and Other Requirements ("the Rule") provides additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division's income-based homeownership program. The mission of the income-based homeownership program is to offer members of the Nation homeownership opportunities without requiring credit checks or down payments which offers payment plans that may include federal subsidy, is free of interest, and with payment amounts based on household income.

The Rule conflicts with Oneida Business Committee Resolution BC-12-23-09-A, the Oneida Housing Authority Admissions and Occupancy Policy (the "Policy"). [see *Landlord-Tenant Rule No. 4 section 4.4-5 and 4.4-6*]. This resolution contains social eligibility criteria for Oneida Housing Authority housing programs.

One criteria used in the Policy is that debt owed to entities outside of the Oneida Housing Authority is not considered when determining eligibility for Oneida Housing Authority housing programs. The Rule conflicts with the Policy because the Rule does not allow an applicant for a rental agreement to have a balance greater than two hundred dollars (\$200) owed to any utility provider and may not have any prior debt owed to the Comprehensive Housing Division, which includes Elder Services and the Division of Land Management in addition to the Oneida Housing Authority. *[see Landlord-Tenant Rule No. 4 section 4.4-5].*

Another criteria used in the Policy is debt related evictions from a non-Oneida Housing Authority entity are not allowed to be used to disqualify an applicant from participating in an Oneida Housing Authority housing program. The Rule conflicts with the Policy because the Rule states that an applicant that has had a rental agreement with the Comprehensive Housing Division subject to an eviction and termination within two (2) years from the date of the application is not eligible to participate in the income-based rent-to-own program. *[see Landlord-Tenant Rule No. 4 section 4.4-6].* The Rule looks at rental agreements subject to evictions with the Division of Land Management and Elder Services in addition to just the Oneida Housing Authority.

### ***Conclusion***

A conflict exists between this Rule and the Oneida Business Committee Resolution BC-12-23-09-A, Oneida Housing Authority Admissions and Occupancy Policy.

The language in Resolution BC-12-23-09-A would apply to income based rent-to-own programs in addition to other Oneida Housing Authority rental programs. It is recommended that either the rule is amended or the resolution is amended or repealed to eliminate this conflict.



**Financial Analysis for: Income Based Rent to Own Program Eligibility, Selection, and Other Requirements**

<b>Type of Cost</b>	<b>Description/Comment</b>	<b>Dollar Amount</b>
Start Up Costs	N/A – Home Ownership programs already exists. Rule No. 4 modifies program administration	\$0.00
Personnel	N/A – staff dedicated to home ownership program is already in place	\$0.00
Office	N/A – Current office configuration already accommodates home ownership program	\$0.00
Documentation Costs	N/A – No additional costs projected to be different that existing program	\$0.00
Estimate of time necessary for an individual or agency to comply with the rule after implementation		N/A
Other, please explain	<p><b>Rule No. 4, Section 4.7-2(a) Payment Amount – Line 256.</b></p> <p>Monthly plans will now offer a 15%, 20%, 25%, or 30% of adjusted gross income payment, in addition to an administrative fee.</p> <p>Current plans offer a 15% of adjusted gross income payment, including the administrative fee.</p> <p>Changes in monthly payments plans will increase program revenue. The amount is unknown due to launching of a new program, and no immediate plans to construct homes specifically for the Rent to Own Program.</p>	Unknown
	<p><b>Rule No. 4, Section 4.7-2(d) Federal Subsidy – Line 296.</b></p> <p>The amount of federal subsidy is being standardized to 30% of the homes construction cost.</p> <p>Standardizing the subsidy will increase program revenue, generating program income that will be used toward future construction for the program.</p> <p>The amount of increased program revenue is unknown due to launching of a new program and no immediate plans to construct homes specifically for the Rent to Own Program.</p>	

	<p><b>Financial Comparison Model</b></p> <p><u>Scenario – Current Model</u></p> <ul style="list-style-type: none"> <li>• New House Value = \$280,000</li> <li>• Ghost Payment (Value/180 months) = \$1,555</li> <li>• Min. Household Income \$2,500 monthly</li> <li>• Payment = \$375 (\$275 principal &amp; \$100 admin. Fee) - 15% of adjusted monthly income.</li> <li>• 15 year agreement satisfaction</li> <li>• Principal paid - \$49,500</li> <li>• Federal Subsidy = \$230,500</li> </ul> <p><u>Scenario – New Program Model</u></p> <ul style="list-style-type: none"> <li>• New House Value = \$280,000</li> <li>• Federal Subsidy = \$84,000 (30% of cost)</li> <li>• Loan Amount – \$196,000</li> <li>• Min. Household Income \$2,500 monthly</li> <li>• Payment = \$500 (20%) principal + \$100 admin fee</li> <li>• Principal paid = \$196,000</li> <li>• Agreement satisfaction = 32.6 years</li> </ul> <p><u>Program Benefits</u></p> <ul style="list-style-type: none"> <li>• No credit check</li> <li>• No interest</li> <li>• Federal Subsidy</li> <li>• Payments based on household income</li> <li>• Significant home owner total costs savings over conventional mortgage</li> </ul>	
Total	Annual Net Revenue	

## NOTICE OF

**PUBLIC MEETING**

TO BE HELD

**May 18, 2017 at 3:00 P.M.**

IN THE

**OBC Conference Room  
2nd Floor, Norbert Hill Center**

In accordance with the Administrative Rulemaking Law, the Oneida Housing Authority (OHA) is hosting this Public Meeting to gather feedback from the community regarding the following rule(s).

### **TOPIC: Landlord-Tenant Law Rule #4 — Income Based Rent to Own Program Eligibility, Selection & Other Requirements**

**This is a proposal to adopt a rule which would govern the rent to own program by providing:**

- ♦ The program's eligibility requirements;
- ♦ Application process and wait list requirements;
- ♦ The process for tenant selection ;
- ♦ Requirements for setting rents;
- ♦ The requirements related to rent to own loans, including financial hardship recovery agreements and home improvement loans; and

To obtain copies of the Public Meeting documents for this proposal, please visit [www.oneida-nsn.gov/Register/PublicMeetings](http://www.oneida-nsn.gov/Register/PublicMeetings).

### **PUBLIC COMMENT PERIOD OPEN UNTIL May 25, 2017**

During the Public Comment Period, all interested persons may submit written comments and/or a transcript of any testimony/spoken comments made during the Public Meeting. These may be submitted to [Enter Authorized Agency Name Here] by U.S. mail, interoffice mail, e-mail or fax.

**Oneida Housing Authority**  
2913 Commissioner Street, Oneida, WI 54155  
[jhill7@oneidanation.org](mailto:jhill7@oneidanation.org)  
Phone: 920-869-2227  
FAX: 920-869-2836

## **Winkler named PCSD Resource Officer**

Adam Winkler, of the Pulaski Police Department, is the new school resource officer for the Pulaski Community School District.

The PCSD contracts with the Village of Pulaski for the position. Winkler will replace officer Jim Tinlin, who plans to retire on Aug. 15 after 19 years as school resource officer. Winkler starts in his new position in May and will train with Tinlin prior to his retirement. Tinlin has 25 years of total service with the Pulaski Police Department and 40 years total in law enforcement.

Raider, the police de-

partment's K-9 dog, will be retired when Tinlin retires. The Pulaski Police Department is raising funds to purchase a new K-9 dog and while it will be used in PCSD schools, it will not be assigned with the new liaison officer.

"I am excited for the opportunity to work with Adam in his new position of school resource officer," said PCSD director of Student Services Lisa Misco. "His previous experience, personality and passion for working with students will certainly make him an asset to our school district," she added.



**Adam Winkler**

Winkler worked with the Forest County Sheriff's Department for eight years prior to being hired by the Pulaski Police Department in July 2016.

"Officer Winkler will do a great job as a school resource officer, and he will be able to fulfill his dream to become a school resource officer," said police chief Mark Hendzel.

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GOLF TOURNAMENT**  
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A BEAUTIFUL DAY  
ON THE COURSE WITH US!**

Please join us on **Friday, June 2, 2017** on the beautiful Thornberry Creek at Oneida Golf Course, Wisconsin, for a great day of golf, contests, raffle prizes and giveaways. Golf fees are \$100 per person or \$400 per foursome, and include a round of golf, cart, lunch, awards dinner, driving range and a terrific giveaway!

This is a great cause to support! Our Golf Tournament is our **main fundraiser** for our scholarship program, which has awarded \$320,000 to 170 students.

We're looking for golfers, sponsors, donated items for gift bags and giveaways. You can register online and donate online here: [www.aiccwgolf.com](http://www.aiccwgolf.com). Or, contact Beverly Anderson at (414) 604-2044 or by email at: [beverly@aiccw.org](mailto:beverly@aiccw.org).

**Thank you for your continued support!**

**Registration Deadline: May 30, 2017**

**HOTEL INFORMATION:**  
Radisson Hotel & Conference Center Green Bay  
2040 Airport Dr, Green Bay, WI 54313 • (920) 494-7300

**JUNE 2**  
**Thornberry Creek at Oneida**  
4470 N. Pine Tree Road, Oneida • WI

**10:30 am Shotgun Start**  
(check-in begins at 8:30 am)  
**Lunch on the Golf Course**  
**Awards Program and Dinner**  
**Banquet After Golfing**

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Closest to the Hole  
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Big Ticket Raffle



Oneida Nation  
 Oneida Business Committee  
 Legislative Operating Committee  
 PO Box 365 • Oneida, WI 54155-0365  
[Oneida-nsn.gov](http://Oneida-nsn.gov)



**ONEIDA HOUSING AUTHORITY PUBLIC MEETING**  
 Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
**May 18, 2017 3:00p.m.**

**OHA Public Meeting - Rule #4 – Income Based Rent to Own Program Eligibility, Selection & Other Requirements**

**PUBLIC MEETING SIGN IN SHEET**

	Name: (Print clearly)	Email Address / Phone #	Department/Roll #	Oral Testimony (Y) or (N)
1.	Scott Denny		OHA	No
2.	Dale P. Blelock		OHA	No
3.	MARY ADAMS	MARY_Adams8@ aol.com	1908	No
4.	Julie Cornelius		OHA	No
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				



ONEIDA HOUSING AUTHORITY  
P. O. BOX 68  
ONEIDA, WISCONSIN 54155  
(920) 869-2227  
(920) 869-2836 FAX



**Oneida Housing Authority  
Public Meeting**

**Rule #4 – Income Based Rent to Own Program Eligibility, Selection & Other Requirements**  
Business Committee Conference Room-2<sup>nd</sup> Floor Norbert Hill Center  
May 18, 2017 3:00 p.m.

**Present:** Dale Wheelock, Oneida Housing Authority; Scott Denny, Oneida Housing Authority; Julie Cornelius, Oneida Housing Authority; Mary Adams

**Scott Denny:** Good afternoon. The time is 3:00 p.m. and today's date is May 18, 2017. I will now call the public meeting for the Landlord Tenant Law Rule #4 – Income Based Rent to Own Program Eligibility, Selection & Other Requirements to order.

The Oneida Housing Authority is hosting this public meeting to gather feedback from the community regarding this rule. All persons who wish to present oral testimony will need to register on the sign-in sheet at the back of the room.

Written comments may be submitted to the Tribal Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, email or fax as provided on the public meeting notice. These comments must be received by close of business on May 25, 2017.

In attendance from the Oneida Housing Authority is: Scott Denny, Housing Operations Manager; Dale Wheelock, Executive Director.

We will begin today's public meeting for Rule #4 – Income Based Rent to Own Program Eligibility, Selection & Other Requirements.

The rule identifies:

- The programs eligibility requirements
- Application process and wait list requirements.
- The process for tenant selection
- Requirements for setting rent rates
- The requirements related to rent-to-own loans, including financial hardship recovery agreements and home improvement loans; and
- The requirements for annual inspections, updates, and agreement cancellation.

**Mary Adams:** I'm Mary Adams and the question or concern I have is I own a tribal home and I'm about ready to sell that. I have a tribal home and I know that I cannot own a tribal home and be in OHA services. But if I sell that home which I'm getting ready to sell to my son, then that elevates that but I still but I still own a duplex that is not tribal. Can I still go in the home? I mean can I still get one of OHA's homes? So you can't own any property anywhere, I'm presuming. So even in another state, or. Because I think people that have ownership of leased land through their family or something. I don't know, the Indian something that, you can own land like in North Dakota and other places but that's your whole families land. So would that mean that you would have to get your parcel and sell that to your family so it's not part of your ownership anymore? So all of those types of lands I would like to know.



**Mary Adams:** Okay so this example is I have eight sisters. Say one of them have a home already with two bedrooms. Say I am eligible to live now in an OHA and she agrees that I move in there and share housing with her. Would the income be combined income and she would now have to pay more because maybe my income is more, or would I be charged because I have more income than she would, she stays at her income base and would I pay my income base for that same dwelling?

**Scott Denny:** With all registered speakers having provided comments, OHA thanks you for your participation. The public meeting for Rule #4 – Income Based Rent to Own Program Eligibility, Selection & Other Requirements is now closed at 3:15 p.m. Thank you.

**-End of Meeting-**



TO: Interested Parties  
FROM: Krystal L. John, Staff Attorney  
DATE: May 26, 2016  
RE: Public Meeting Comment Review: Landlord-Tenant Law, Rule #4 – Income Based Rent to Own Program Eligibility, Selection and Other Criteria

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On May 18, 2017, a public meeting was held regarding a rule under the Landlord-Tenant law, which sets the eligibility, selection and other criteria requirements for the income-based rent to own program.

This memorandum is submitted as a review of the oral comments received during the public meeting process; there were not any written comments received within the public comment period.

### **Comment 1 – Eligibility Question**

#### *Comment*

**Mary Adams:** I'm Mary Adams and the question or concern I have is I own a tribal home and I'm about ready to sell that. I have a tribal home and I know that I cannot own a tribal home and be in OHA services. But if I sell that home which I'm getting ready to sell to my son, then that elevates that but I still but I still own a duplex that is not tribal. Can I still go in the home? I mean can I still get one of OHA's homes? So you can't own any property anywhere, I'm presuming. So even in another state, or. Because I think people that have ownership of leased land through their family or something. I don't know, the Indian something that, you can own land like in North Dakota and other places but that's your whole families land. So would that mean that you would have to get your parcel and sell that to your family so it's not part of your ownership anymore? So all of those types of lands I would like to know. Okay so this example is I have eight sisters. Say one of them have a home already with two bedrooms. Say I am eligible to live now in an OHA and she agrees that I move in there and share housing with her. Would the income be combined income and she would now have to pay more because maybe my income is more, or would I be charged because I have more income than she would, she stays at her income base and would I pay my income base for that same dwelling?

#### *Response*

The commenter seems to be asking whether she may own other properties and be eligible for an OHA home, however it is not clear whether by OHA home she means a home on a rental basis only or on a rent-to-own basis. For this reason, Scott Denny, OHA Director of Operations has requested that Ms. Adams come in the Oneida Housing Authority to discuss the available programs and the eligibility requirements of each in person. This rule and public meeting speaks only to the homes offered on a rent-to-own basis and section 4.4-8 of the rule provides that

“Applicants that are current homeowners are not eligible for participation in the income-based rent-to-own program.”

As far as Ms. Adams question in regards to income, income is determined based on the income of all household members over the age of eighteen (18). That being said, Ms. Adams question seems to relate to a rental property and not a rent to own property, so again, I encourage her to meet an Oneida Housing Authority representative to discuss the available programs.



# June 2017

June 2017							July 2017						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3							1
4	5	6	7	8	9	10	2	3	4	5	6	7	8
11	12	13	14	15	16	17	9	10	11	12	13	14	15
18	19	20	21	22	23	24	16	17	18	19	20	21	22
25	26	27	28	29	30		23	24	25	26	27	28	29
							30	31					

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
	May 28	29	30	31	Jun 1	2	3
May 28 - Jun 3							
	4	5	6	7	8	9	10
Jun 4 - 10		12:15pm 2:00pm FW: Public Meetings (BCCR) - Jennifer A. Falck	3:00pm 4:00pm LOC Prep Meeting (BC_Conf_Room) - Jennifer A. Falck	9:00am 2:00pm LOC Meeting (BC_Conf_Room) - Taniquelle J. Thurner			
	11	12	13	14	15	16	17
Jun 11 - 17				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			
	18	19	20	21	22	23	24
Jun 18 - 24		1:30pm 4:30pm FW: Comment Review Meeting (BC_Exec_Conf_Room) - Jennifer A. Falck	3:00pm 4:00pm LOC prep 6:00pm 10:00pm GTC (Radisson)	9:00am 2:00pm LOC Meeting (BC_Conf_Room) - Taniquelle J. Thurner 9:00am 2:00pm LOC Meeting (BC_Conf_Room) - LOC			
	25	26	27	28	29	30	Jul 1
Jun 25 - Jul 1				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert Hill Center)			

# July 2017

July 2017							August 2017						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
						1			1	2	3	4	5
2	3	4	5	6	7	8	6	7	8	9	10	11	12
9	10	11	12	13	14	15	13	14	15	16	17	18	19
16	17	18	19	20	21	22	20	21	22	23	24	25	26
23	24	25	26	27	28	29	27	28	29	30	31		
30	31												

	Sun	Mon	Tue	Wed	Thu	Fri	Sat
Jun 25 - Jul 1	<b>Jun 25</b>	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>	<b>Jul 1</b>
Jul 2 - 8	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
			3:00pm 4:00pm LOC Prep Meeting (BC_Conf_Room) - Jennifer A. Fal	9:00am 2:00pm LOC Meeting (BC_Conf_Room) - Taniquelle J. Thurner			
Jul 9 - 15	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>
				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd Floor Norbert			
Jul 16 - 22	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>
		6:00pm 10:00pm GTC Meeting (Radisson)	3:00pm 4:00pm LOC prep	9:00am 2:00pm LOC Meeting (BC_Conf_Room)  9:00am 2:00pm LOC Meeting (BC_Conf_Room)			
Jul 23 - 29	<b>23</b>	<b>24</b>	<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>
				8:30am 4:30pm BC Meeting (Business Committee Conference Room, 2nd FI			
Jul 30 - Aug 5	<b>30</b>	<b>31</b>	<b>Aug 1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>