

# Oneida Nation

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Oneida, WI 54155

## **BC Resolution # 07-26-17-J**

### **Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy**

**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

#### *The Nation's Children's Code*

**WHEREAS,** the Children's Code recognizes the authority of the Oneida Nation to exercise the fundamental right of sovereignty and self-determination by setting forth procedures to provide for the welfare, care, and protection of Oneida children through the preservation of the family unit; and

**WHEREAS,** the Children's Code allows the Nation to exercise jurisdiction over children who are in need of protection or services so that the Nation can ensure that child welfare matters involving Oneida children are handled on the Reservation where more family members and Oneida foster homes are located and the traditions and culture of the Nation can be better preserved; and

**WHEREAS,** the Children's Code strengthens family life by assisting parents in fulfilling their responsibilities as well as facilitating the return of Oneida children closer to the Nation's resources which may result in a higher percentage of reunifications, lower the number of out-of-home placements, and increase family stability; and

**WHEREAS,** the Children's Code extensively details the roles and responsibilities of those entities involved in child welfare matters and the processes which will be followed by the Oneida Family Court, including proceedings for children in need of protection or services, guardianship for certain children in need of protection or services, termination of parental rights, and adoption; and

**WHEREAS,** the passage of the Children's Code and the Nation's updated Indian Child Welfare Act Policy will dissolve the Oneida Child Protective Board and re-delegate the Oneida Child

Protective Board's authority and responsibilities to the Nation's Indian Child Welfare Department and the Nation's Child Welfare attorney; and

**WHEREAS,** a public meeting on the proposed law was held on May 4, 2017, in accordance with the Legislative Procedures Act, and comments received were accepted and reviewed by the Legislative Operating Committee on May 17, 2017, May 18, 2017, and May 25, 2017; and

*The Nation's Indian Child Welfare Act Policy*

**WHEREAS,** the Oneida Business Committee adopted resolution BC-09-25-81, entitled "Oneida Child Protective Board Ordinance," which delegated the powers conferred upon the Nation by the Congress of the United States under the Indian Child Welfare Act to the Oneida Child Protective Board; and

**WHEREAS,** the resolution BC-09-25-81 did not set forth the policy of the Oneida Nation to provide direction to the Oneida Child Protective Board for how the Board should approach such cases; and

**WHEREAS,** the Oneida Business Committee recognized in resolution BC-05-24-84-C that it took "steps to protect the best interests of children and to promote the stability and security of Indian tribes and families by establishing the Oneida Child Protective Board"; and

**WHEREAS,** the State of Wisconsin, on December 7, 2009, codified the Wisconsin Indian Child Welfare Act, which strengthens and enhances the Indian Child Welfare Act and adopts the minimum standards referenced in the Indian Child Welfare Act; and

**WHEREAS,** 25 U.S.C. §1915(c), the Indian Child Welfare Act, allows an Indian Tribe to establish a different order of placement preference for foster care placements and adoptive placements than those set out in §1915(a) and (b) of the federal Indian Child Welfare Act; and

**WHEREAS,** the Oneida Business Committee recognized in resolution BC-05-13-15-A that it is critical for the protection of our Oneida children to establish a policy statement regarding placement preferences to provide direction to the Oneida Child Protective Board, the Nation's Indian Child Welfare Department, and the Oneida Law Office; and

**WHEREAS,** with the adoption of the Children's Code and the dissolution of the Oneida Child Protective Board, the Oneida Business Committee finds it critical for the protection of our Oneida Children to establish an updated policy statement regarding placement preferences to provide direction to the Nation's Indian Child Welfare Department and the Oneida Law Office on how to handle Indian child welfare matters pending in outside jurisdictions; and

*Adoption of the Children's Code and Effective Date*

**NOW THEREFORE BE IT RESOLVED**, that the Children's Code is hereby adopted and shall become effective four hundred and fifty-five (455) calendar days from the approval date of the Fiscal Year 2018 Budget.

**BE IT FURTHER RESOLVED**, that the Oneida Business Committee is authorized to make such modifications and additions to the effective date and Implementation Plan as it deems necessary to implement the Children's Code in accordance with the proposed timelines, and shall ensure that the Children's Code does not become effective until all proper infrastructure is in place.

*Implementation Plan for the Children's Code*

**BE IT FURTHER RESOLVED**, that the Oneida Business Committee is hereby directed to develop an Implementation Plan to include the following:

- 1) *Acquisition and Training of Required Personnel.* The Oneida Nation entities affected by the adoption of this Children's Code, including the Oneida Family Court and the Nation's Indian Child Welfare Department, shall include the expenses associated with the new positions required to implement the Children's Code in the Fiscal Year 2018 Budget. The affected entities shall begin the hiring process and training new staff upon approval of the Fiscal Year 2018 Budget.
- 2) *Negotiation of 161 Agreements and Memorandums of Understanding and/or Agreement.* The Nation shall seek to enter into all appropriate 161 Agreements and memorandums of understanding and/or agreement.
  - a. *161 Agreements.* The Nation shall continue to work towards negotiations with Brown County and Outagamie County for the development of 161 Agreements which clarify the relationship between the Nation and the county in providing for the health, safety and welfare of children by determining the circumstances in which the county department will make payments for costs of out-of-home placements of children when the placement is ordered by the Oneida Family Court.
  - b. *Memorandum of Understanding and/or Agreement with Brown County and Outagamie County.* The Nation may seek to enter into a memorandum of understanding and/or agreement with Brown County and Outagamie County to detail all responsibilities, procedures, interactions, and use of foster homes, shelter care facilities, and treatment facilities.
  - c. *Memorandum of Understanding and/or Agreement with Entities of the Nation.* The Indian Child Welfare Department shall 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.
- 3) *Transfer of Cases.* The following determination has been made for the transfer of cases from Brown and Outagamie County jurisdiction to the jurisdiction of the Oneida Family Court:
  - a. When the Children's Code becomes effective all new cases in Brown and Outagamie County shall begin in or transfer to Oneida Family Court.
  - b. Any case in Brown and Outagamie County that has started within the most recent three (3) months may transfer to the Oneida Family Court.

- c. All other current cases may remain in Brown and Outagamie County, unless the Nation's Indian Child Welfare Department determines the case would be better suited in the Oneida Family Court or another party motions the Court to transfer jurisdiction.

Before the Children's Code becomes effective, the Indian Child Welfare Department will meet with each affected family to discuss the status of their case, what jurisdiction the case would be better suited in, and the family's feelings on transfer to the Oneida Family Court. At least sixty (60) days before the Children's Code becomes effective the Legislative Operating Committee and the Indian Child Welfare Department shall hold a work meeting to discuss the number of cases seeking transfer to the Oneida Family Court.

- 4) *Recruitment of Foster Homes and Guardians ad Litem.* The Nation's Indian Child Welfare Department shall continue efforts to develop effective recruitment methods to increase the number of foster homes available for the Nation. The Oneida Family Court shall make recruitment efforts to increase the number of guardians ad litem available for use by the Oneida Family Court. The Oneida Family Court shall develop appropriate training for guardians ad litem involved in child welfare proceedings.
- 5) *Dissolution of the Oneida Child Protective Board.* The Oneida Child Protective Board shall be dissolved and no longer responsible for any involvement with Indian child welfare matters, including those matters that fall under the jurisdiction of the Oneida Nation Judiciary, ICWA or WICWA, effective September 30, 2017. The Nation's Indian Child Welfare Department and the Nation's Child Welfare attorney shall be responsible for following the Nation's Indian Child Welfare Act Policy.

The Chairperson and Secretary of the Oneida Child Protective Board shall be responsible for closing out open business of the Oneida Child Protective Board and forwarding the materials generated by the Oneida Child Protective Board to the Nation's Secretary's Office for proper disposal by October 16, 2017, pursuant to the Nation's Comprehensive Policy Governing Boards, Committees and Commissions.

*Adoption of the Nation's Indian Child Welfare Act Policy – For those cases outside the Jurisdiction of the Nation*

**BE IT FURTHER RESOLVED**, the Oneida Business Committee hereby sets forth the following as the policy of the Oneida Nation as it pertains to those cases that fall outside the jurisdiction of the Nation and under the jurisdiction of the federal Indian Child Welfare Act (ICWA) and the Wisconsin Indian Child Welfare Act (WICWA):

- 1) The Oneida Nation shall intervene in all ICWA/WICWA cases pending in outside jurisdictions involving children that are enrolled members of the Nation or eligible for enrollment unless such intervention would be impracticable under the circumstances of the case as decided by the Nation's Indian Child Welfare Department and the Nation's Child Welfare attorney.
- 2) The Oneida Nation hereby establishes the following as the placement preferences should it be necessary to place a child outside the child's home:
  - a. A member of the child's immediate or extended family;
    - i. Extended family member means a person who has reached the age of eighteen (18) and who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first, second, third or fourth cousin, stepparent.
  - b. A family clan member;

- c. A member of the Oneida Nation;
- d. Descendants of the Oneida Nation;
- e. A member of another federally recognized tribe;
- f. Fictive kin within the Oneida Nation community;
  - i. Fictive Kin means a person or persons who, to the biological parents of the minor child at issue, have an emotional tie to that parent wherein they are like family.
- g. Fictive kin outside the Oneida Nation community; or
  - i. Fictive Kin means a person or persons who, to the biological parents of the minor child at issue, have an emotional tie to that parent wherein they are like family.
- h. Any other person or persons not listed above as approved by the Nation's Indian Child Welfare Department.


**BE IT FURTHER RESOLVED**, all those who work with Indian Child Welfare Cases, including the Indian Child Welfare Department, the Social Services Department, and the Oneida Law Office shall be bound by and required to follow the above policy statement.

**BE IT FURTHER RESOLVED**, that the Nation shall continue to follow and adhere to Federal law, Court opinions which interpret Federal law, the Bureau of Indian Affairs Guidelines, and the Bureau of Indian Affairs Regulations.

**BE IT FINALLY RESOLVED**, that the Nation's Indian Child Welfare Act Policy is hereby adopted and will become effective September 30, 2017.

#### CERTIFICATION

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum; 9 members were present at a meeting duly called, noticed and held on the 26<sup>th</sup> day of July, 2017; that the forgoing resolution was duly adopted at such meeting by a vote of 8 members for, 0 members against, and 0 members not voting; and that said resolution has not been rescinded or amended in any way.

  
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Lisa Summers, Tribal Secretary  
Oneida Business Committee

\*According to the By-Laws, Article I, Section 1, the Chair votes "only in the case of a tie."