

## Title 9. Education – Chapter 902 Child Care Department Consumer Complaint

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### **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 BC-08-09-17-C.

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 This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.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;
- (5) Causing mental harm to a child; or
- (6) Causing a child to view or listen to sexual activity or sexually explicit materials.

(b) "Area Manager" means the individual employed by the Nation as the Area Manager of

Education and Training within the Governmental Services Division.

(c) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(d) "Complaint" means an allegation of certain wrongdoing against the Oneida Child Care Department or employee.

(e) "Complaint coordinator" means the individual designated to receive and handle all complaints alleged against the Oneida Child Care Department.

(f) "Complaint investigator" means any of the following individuals as recommended by the complaint coordinator to investigate alleged complaints against the Oneida Child Care Department:

(1) the supervisor of an Oneida Child Care Department employee that has a complaint alleged against him or her;

(2) the supervisor's substitute; and/or(3) an outside agency designated to investigate a complaint, including but not limited to, the Wisconsin Department of Children and Families and a law enforcement agency.

(g) "Conflict of interest" means any interest, real or apparent, whether it be personal, financial, political, or otherwise, in which a person or their immediate family, friends, associates, or any other person with whom they have contact with, have that conflicts with any right or interest of the Nation. Conflicts of interest include any situation that has the potential to corrupt a person's motivation or decision making, because of an actual or apparent divergence between the person's self-interests, and the best interests of the Nation.

(h) "Department" means the Oneida Child Care Department.

(i) "Director" means the individual employed by the Nation as the Oneida Child Care Department Director.

(j) "Division Director" means the individual employed by the Nation as the Governmental Services Division Director.

(k) "Employee" means an individual employed by the Nation in the Oneida Child Care Department.

(l) "Nation" means the Oneida Nation.

(m) "Neglect" means a failure, refusal or inability of an Oneida Child Care Department employee to provide necessary care, food, clothing, medical care or shelter so as to seriously endanger the physical health of a child, lack of supervision, or total abandonment.

(n) "Ombudsperson" means an individual employed by the Nation who functions as a designated confidential, independent, neutral and informal dispute resolution resource that does not represent the Nation or any specific party, but advocates for fairness and the application of a fair and equitable process.

(o) "Substantiated" means a finding that the complaint or allegation in the complaint is valid because there is proof by a preponderance of the evidence.

(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:

- (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;
- (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.

(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.

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 overriding 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 and/or the corrective action plan.

902.11-2. The Division Director shall serve as the original hearing body for appeals of contested results of a complaint investigation against the Department. 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;

(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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Adopted – BC-08-09-17-C

**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.

<b>LEVEL</b>	<b>CATEGORY</b>	<b>DESCRIPTION</b>	<b>WHO INVESTIGATES</b>
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.