

**SPIRIT LAKE TRIBAL CHILDREN’S CODE
CHAPTER 1: CHILDREN AND SOCIAL SERVICES**

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SPIRIT LAKE CHILDREN'S CODE

CHAPTER 1: CHILDREN AND SOCIAL SERVICES

ARTICLE ONE: ADMINISTRATIVE PROVISIONS

1-101 PURPOSE

(A) The Spirit Lake Children's Code shall be interpreted and construed to effectuate the following:

- (1) To protect our children through stabilizing and strengthening families and to assure the safety and welfare of children;
- (2) To preserve and retain family unity;
- (3) To provide for the care, protection, and physical, emotional and spiritual development of our children;
- (4) To express the belief that although protection of our children is primarily the responsibility of the parents, the Tribe must intervene to correct the situation and protect the children and Tribal community when parents are not able to;
- (5) To ensure that the community is kept safe and that the children who commit offenses under this Code to apply a program of supervision, care, and rehabilitation consistent with the protection of the community; and
- (6) To provide judicial procedures that ensure parties are granted fair treatment, and that their legal rights are recognized and enforced.

ARTICLE TWO: DEFINITIONS

1-201 DEFINITIONS

(A) For the purposes of this Code, the use of he/she means he or she, the use of him/her means him or her, and the singular includes plural except where the context clearly indicates differently and unless the context provides otherwise, the following words and phrases shall be defined accordingly:

(1) Abandon. When a parent or legal guardian, willfully leaves a child for more than sixty (60) days, without adequate communication, or fails to support a child or with no intent of returning to the child.

(2) Abandonment. Means lack of parental contact with her child or the failure to provide financial support for more than one (1) continuous year. Placement of the child with a member of either parent's extended family shall not constitute abandonment.

(3) Active Efforts. Means a rigorous and concerted level of services that is ongoing throughout the involvement of the Tribal social services that uses the prevailing Dakota social and cultural values, conditions, and way of life to preserve the child's family and prevent placement of the child and, if placement occurs, to return the child to the child's family at the earliest possible time.

(4) Abuse. Means the intentional infliction of physical or mental injury, unreasonable confinement, intimidation, cruel punishment, or deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of a child.

- (5) Adjudication. A finding by the Children's Court on the facts alleged in the petition or complaint and incorporated in a decree.
- (6) Adjudicatory Hearing. A hearing to determine whether the allegations stated **in the petition alleging a child to be in need of protection or services** is supported by the evidence that a child is in need of protection or services.
- (7) Adult. Any person who is subject to the jurisdiction the Spirit Lake Tribe and is eighteen (18) years of age or older.
- (8) Best interests of a child. “Best interests of a child” means to preserve, maintain, and support a child's sense of belonging to their family, extended family, and Tribe. The best interests of a child are interwoven with the best interests of the Spirit Lake Tribe.
- (9) Child. A child for purposes of this Code is a “Spirit Lake child” meaning any enrolled or eligible for enrollment person under the age of eighteen (18) years of age and under the jurisdiction of the Spirit Lake Tribal Court and this definition shall include an unborn child for the purposes of the Spirit Lake Tribal Children’s Code.
- (10) Child in need of protection or services. A “child of protection or services” is a child whom:

- a. Has no parent, guardian, Indian custodian, or other custodian available and willing to care for him;
- b. Has suffered or is likely to suffer immediate physical harm, resulting from the intentional or negligent acts of the parent, guardian, or other custodian of the child;
- c. Has not been provided with adequate food, clothing, shelter, medical care, education, or supervision by his parent, guardian,

or other custodian who is responsible for the health, safety, and welfare of the child. This means taking into account any special physical or mental needs of the child;

- d. Has been sexually abused by parent, guardian, other custodian, or any household member;
- e. Has been emotionally abused or neglected by the parent, guardian, other custodian, or any household member;
- f. Has committed delinquent acts or status offenses as a result of pressure, guidance, or approval by the parent, guardian, or other custodian;
- g. Has been exposed to continued alcohol use and/or substance abuse to such a degree that the health, safety, or welfare of the child is being affected;
- h. Is in need of treatment and whose parents, guardians, or other custodian, have refused to participate in treatment as ordered by the court;
- i. Has been to chronically truant or other inattention of educational needs; or
- j. A delinquent child whose parent has difficulty in caring for a child due to the child's behavior and /or resistance.

(11) Court. Any Spirit Lake Tribal Court when exercising jurisdiction under this Code.

(12) Delinquent Act. A child who has committed an act that would constitute a crime under Spirit Lake Tribal law if committed by an adult, or any act a child commits that is defined as an offense under the Spirit Lake Juvenile Code.

(13) Delinquent Child. A child who:

- a. Violated any federal, Tribal, or state law excepting traffic statutes or ordinances, hunting or fishing statutes or ordinances, or any lawful order of the Court made pursuant to this Code; or
- b. Habitually violates any traffic, hunting, or fishing statutes or ordinances, or lawful order of the Court made under this Code.

(14) Disposition hearing. Is a hearing, held after an adjudicatory hearing has bound a child in need of protection or supervision, or delinquent in

which the Court must determine what treatment should be ordered for the family and the child, and what placement of the child should be made during the period of treatment.

(15) Diversion. A course of remedial action taken in matters arising under this Code designed to avoid formal court action and to serve the best interests of the child involved.

(16) Educational neglect. Any child under age of eighteen years (18) of age who has ten (10) days or more unexcused absences in a semester of school.

(17) Extended Family Member. A person who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second blood cousin, step parent; or

- a. Any person related by blood or marriage to the child; or
- b. Any individual who is viewed by the family as a relative in accordance with the Dakota customs of the Spirit Lake Tribe.

(18) Emergency Foster Home Placement. This is a placement with a family that is licensed by the Tribe to accept emergency placements of children at any hour day or night.

(19) Emotional Abuse. A pattern of behavior by any person responsible for the child's health, safety, and welfare, that attacks a child's emotion development and sense of self-worth; or the failure of a person to provide a child with a nurturing environment characterized by the qualities of appropriate attention, support, and affection.

(20) Foster Home. A facility licensed by a federal, tribal, or state organization/agency, which is eligible for payments providing

specialized care to children.

(21) Grandparent. Means any of the following:

- b. Biological grandparent;
- c. The brothers and sisters of a biological grandparent, and their spouses; and
- d. Any other person, who, by virtue of an adoption either of themselves or a member of their family pursuant to the laws of any Indian Tribe or state, would come within the terms of subparagraphs (a) or (b) of the above subsection 18.

(22)“Legal guardian”. Means a person or organization appointed by the Spirit Lake Tribe or a Court of appropriate jurisdiction, other than a parent, that shall have the duty, responsibility, and authority to provide care, shelter, medical treatment, and control of a child.

(23) Guardian ad litem. An adult, in an advocacy role, appointed by the Court to:

- a. Represent the best interests of the child in any proceeding involving such child; and
- b. A person other than a parent or guardian, Indian custodian, or social services (or other appropriate agency), to whom legal custody of the child has been given; and
- c. This definition shall not include any person who only has physical custody.

(24) Habitual Truancy. Means a child who has been truant for five (5) days within ten (10) school days or ten (10) trancies within any ninety- (90) school day period within a school year.

(25) Indian Child Welfare Act representative. The person or party designated by the Court or the Tribe to represent the Tribe in all child welfare proceedings under the Children’s Code, state court, or in which the Tribe is a party to the proceeding.

(26) Indian custodian. Any Indian person who is a legal guardian as defined under this code, of an Indian child under tribal law, Dakota custom, or state law, to whom the temporary physical care, custody, and control has been transferred by the parent of such child.

(27) Involuntary foster care placement. Means the following:

- a. Any action removing a child from the physical custody of a parent, guardian, or other custodian;
- b. The removal is a Court ordered temporary placement in a foster home, institution, or home of another guardian or custodian;
- c. The parent, guardian, or other custodian cannot have the child returned upon demand pursuant to a court order; and
- d. The parental rights have not been suspended or terminated.

(28) Legal Custody. “Legal Custody” means custody subject to any limitations, which may be imposed by the Spirit Lake Tribal Courts and shall be deemed a legal relationship embodying the following rights and duties:

- a. The right to have input in and help determine major life decisions regarding the child such as religion, education, and culture;
- b. The duty to provide a child with food, clothes, shelter, education, physical care, medical care, and any other specialized care needed for any physical or mental disability;
- c. The right in an emergency, to authorize surgery or other extraordinary needed medical care.

(29) Nurturing Environment. An environment characterized by the qualities of appropriate attention, support, and affection, as provided by the caretaker of the child; and failure to provide a child with such nurturing environment may result in slowing the child’s psychological development and growth.

(30) Parent. “Parent” includes a natural or lawfully adoptive parent but does not include persons whose parental rights have been terminated

nor does it include the unwed father for whom paternity has not yet been established or acknowledged for the record.

(31) Permanency planning. Means the systematic process of carrying out, a set of goal-oriented activities designed to help children live in families that offer continuity of relationships with nurturing parents or caretakers, and the opportunity to establish lifetime relationships.

(32) Pre-adoptive placement. Means the temporary placement of a child in a foster home or institution after the termination or suspension of parental rights, but prior to or in lieu of adoptive placement.

(33) Placement prevention and family reunification services. Means services designed to help children remain with their families or to reunite children with their parents.

(34) Preliminary hearing. When a child is placed out of the home, active efforts shall be made to notify the parents of the child or extended family pursuant to Section 1-505 as soon as the hearing is scheduled, and the notice may be in person, in writing, on the record, or by the telephone.

(35) Presenter. A court official who represents the Spirit Lake Tribe in child-welfare proceedings under this Code and the duties and responsibilities of the presenting officer may be delegated to the tribal prosecutor.

(36) Reservation. Means all lands and territories within the exterior boundaries of the Spirit Lake Reservation.

(38) Social Services. Means the Tribal and/or Bureau of Indian Affairs department(s) supervising and directing all child welfare, health, and family services programs, and their related programs.

(39) Suspension of Parental Rights. Defined as the suspension of the rights of biological parents to provide for the care, custody and control of their child.

(40) Termination of Parental Rights. Means the permanent elimination by Court order of all parental rights and duties, including residual parental rights and duties, but not including the child's right to inherit from the parent whose rights have been terminated.

(41) Unborn child. A child conceived or not born is deemed an existing person so far as it may be necessary for the health, safety, and welfare to be protected, in the event of its subsequent birth.

(42) Voluntary foster care placement. Any decision in where there has been participation by the local social services agency/agencies or private child-placing agency resulting in a temporary placement of an Indian child away from the home of the child's parents or Indian custodian in a foster home, institution, or the home of a guardian, and the parent or Indian custodian may have the child returned upon demand.

(43) Ward of the Court. Means a minor child who has a guardian or custodian appointed by the Children's Court for the responsibility of that child.

(44) Working Days. Means any day except Saturday, Sundays, or any Holidays that are recognized by the Spirit Lake Tribe.

(45) Public Defender. A court official tasked with representing Tribal members in child-welfare proceedings when a social service agency is involved.

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ARTICLE THREE: CHILDREN'S COURT

1-301 ESTABLISHMENT.

(A) It is hereby established for the Spirit Lake Tribe of the Spirit Lake Reservation a Court to be known as the Spirit Lake Tribal Children's Court. The Children's Court shall constitute a subdivision of the Spirit Lake Tribal Court;

(B) This Title supersedes all prior versions of the Spirit Lake Children's Code and repeals and replaces said code with passage of this Title;

(C) Any appeals from the Children's Court shall be subject to Section 1-515 of this Code;

(D) The jurisdiction of the Children’s Court shall be civil in nature and shall include the right to issue all orders necessary to insure the safety, well being and best interests of children who are subject to the jurisdiction of the Spirit Lake Tribe Children’s Court. The Children’s Court shall also have the power to enforce subpoenas and orders of restriction, fines, contempt, confinement, and other orders as appropriate.

1-302 JURISDICTION.

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(A) Tribal Proceedings. The Spirit Lake Children’s Court has exclusive, original jurisdiction over all proceedings involving children under this code, wherein:

- (1) The child is domiciled within or is a resident of the Spirit Lake Reservation;
- (2) The child, within thirty (30) days before the filing of the proceeding, had been domiciled on the Spirit Lake Reservation with his parent or legal guardian, and the child is absent from the Reservation because of his removal by a person claiming his custody or for other reasons, and a parent or person who has assumed a parental role, continues to live on the reservation; and
- (3) The child is a ward of the Court, as defined under Section 1-201.

- (4) It is in the best interest of the child that the Children's Court assume jurisdiction because of one or more of the following:
- a. The child and his or her parent(s), have a significant connection with the reservation, and substantial evidence is available to the Children's Court that concerns the child's best interests; or
 - b. The child is physically present on the Spirit Lake Reservation;
 - c. The child has been abandoned; and
 - d. It is necessary as an emergency to protect the child because s/he has been subjected to or threatened with mistreatment or abuse;
- (5) The child is not physically present on the Reservation due to a placement made pursuant to an Order from the Children's Court; or
- (6) The proceeding is transferred to the Children's Court pursuant to the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963.

1-303 AUTHORITY OF THE COURT.

- (A) The Children's Court is authorized to cooperate fully with any tribal, federal, state, public or private agency in order to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to accomplish the purposes of this Code.
- (B) The Children's Court shall utilize such social services as may be provided by any tribal, federal, or state agency.
- (C) The Children's Court may negotiate a contract with any tribal, federal, or state agencies and departments on behalf of the Tribal Council for the care and placement of children whose status is adjudicated under this court, subject to the approval of the Spirit Lake Tribal Council before expenditure of funds.

(D) The Children’s Court may accept or decline other tribal or state court transfers of child custody proceedings.

(E) The Children’s Court may accept or decline Indian Child Welfare referrals from state courts or other tribal courts.

1-304 INTERPRETER.

In any proceeding under this code, an interpreter shall be available for a parent, guardian, custodian, or any other person acting as a parent who does not fully understand the English language. An interpreter shall interpret, after taking an oath to faithfully and truly interpret in the language that the parent, guardian, custodian, or any person acting as a parent understands.

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1-305 RECORDS OF THE COURT.

(A) Following each hearing, the Children’s Court shall enter a written judgment that sets forth its findings, decision, and disposition of each case.

(B) A record of all hearings under this Code shall be made and preserved.

(C) All records from the Children’s Court shall be confidential and shall not be opened to inspection to anyone but the following:

- (1) The child’s attorney or guardian ad litem, with records and is granted access with this Court’s approval;
- (2) The child, the child’s parent, guardian, or other custodian;
- (3) The presenting attorney/the Tribal Attorney;
- (4) The Indian Child Welfare Worker, if applicable;

- (5) The Tribal or BIA social worker assigned to the case;
- (6) The public defender, if necessary for their clients case; and
- (7) State agencies, for good cause, upon written request to the Children's Court, after a hearing to which the child, the child's attorney or guardian ad litem, the child's parent or guardian and the court counselor have been provided with proper notice and a opportunity to be heard.

1-306 PROCEDURES AND AUTHORIZATION.

(A) Procedures. The rules of procedures for Tribal Court shall govern the Children's Court.

(B) Cooperation Authorization. The Children's Court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any foster care, shelter care, treatment or training program(s) and to receive grants-in-aid to carry out the purposes of this Code.

(C) Social Service Utilization. The Children's Court shall utilize such social services as may be furnished by any tribal, federal, or state agency provided that it is economically administered without unnecessary expense.

1-307 CHILDREN'S COURT PERSONNEL.

(A) Children's Court Judge.

(1) Appointment. The Constitution and By-Laws of the Spirit Lake Tribe shall establish the process for the appointment of the Children's Court Judge.

- (2) Qualifications. The qualifications of the Children’s Court judge(s) shall be established by the Constitution and By-Laws of the Spirit Lake Tribe.
- (3) Duties and Powers. Including the duties and powers specifically enumerated under this Code, judges of the Children’s Court shall have the same duties and powers as judges of the Tribal Court and Juvenile Court, including, but not limited to, the contempt of power, the power to issue arrest or custody warrants, and the power to issue search warrants.
- (4) Removal or Disqualification. The rules of removal or disqualification of a Children’s Court judge shall be those rules that govern Tribal Court Judges as established by the Spirit Lake Tribe.

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(B) Presenter.

- (1) Appointment. The Spirit Lake Children’s Court Presenter shall be appointed in the same manner as the Tribal Prosecutor.
- (2) Qualifications. The same general qualifications for a Presenter shall be the same as the qualifications for a Tribal Prosecutor.
- (3) Powers and Duties. A presenting officer shall have the same powers and duties as a Tribal Prosecutor has in Tribal Court or Juvenile Court. A presenting officer shall represent the Tribe in all proceedings under this Code and the Indian Child Welfare Act. A presenting officer shall make recommendations to the Spirit Lake

Children's Court and to any caseworker assigned to the child's case. A presenting officer may make recommendations to the Spirit Lake Tribal Council regarding needed amendments to this Code. The presenting officer shall be responsible for developing the necessary procedures for carrying out the objectives of this Code.

- (4) Removal or Disqualification. The rules of removal or disqualification of a presenting officer shall be the same as those for a tribal prosecutor.

(C) Public Defender.

(1) Appointment. The Spirit Lake Children's Court Public Defender shall be appointed in the same manner as the Tribal Prosecutor.

(2) Qualifications. The same general qualifications for a Public Defender shall be the same as the qualifications for a Tribal Prosecutor.

(3) Powers and Duties. A public defender shall have the same powers and duties as a public defender has in Tribal Court or Juvenile Court. A public defender shall present a defense to legal proceedings in Children's Court when it involves social service agency as the adverse, or opposite party. A public defender may make recommendations to the Spirit Lake Tribal Council regarding needed amendments to this Code. The Public Defender may assist in developing the necessary procedures for carrying out the objectives of this Code.

(D) Guardians Ad Litem.

- (1) Appointment. At any stage of the proceedings conducted under this Code, the Court may appoint a guardian ad litem for the child.

(2) Role. The role of the guardian ad litem is to represent the interests of the child. A child of 15 years of age or older is presumed capable of determining what is in his or her best interests. It is the duty of the guardian ad litem to represent the child's wishes in such cases. For the children less than 15 years of age, the guardian ad litem shall make a determination as to the best interests of the child, regardless of whether that determination reflects the wishes of the child. However, the wishes of the child shall always be relevant to the determination of best interests and shall be weighed according to the competence and maturity of the child.

(3) Duties. The guardian ad litem shall perform the following duties:

- a. Appear at all hearings when assigned as advocate;
- b. Conduct an independent investigation, including interviewing the child, parent(s), social worker(s), care provider(s), school personnel and other persons to properly ascertain the facts and circumstances underlying the allegation that the child is in need of protection or services within the jurisdiction of the Children's Court;
- c. Ascertain the interests of the child and taking the child's wishes into consideration, according to the competence and maturity of the child;
- d. Provide a written report of findings and recommendations to the Court at each hearing held before the Court;
- e. Provide a written report of findings and recommendations to the Presenter and, if applicable, the Public Defender, 5 days before each hearing.

(E) Social Service Workers.

(1) Employment. The Spirit Lake Tribal Social Services shall employ or contract for social service workers.

(2) Cooperation. The Spirit Lake Tribal Social Services Department, or agency designated to carry out its functions on behalf of the Spirit

Lake Tribe, shall cooperate with such state and community services as are necessary to achieve the purposes of this Code. The Spirit Lake Tribal Social Services Department, or agency designated to carry out its functions on behalf of the Spirit Lake Tribe, may negotiate agreements with other jurisdictions, and such agreements shall be subject to approval by the Children's Court and Tribal Council.

(3) Duties. A social worker shall perform the following in conducting an investigation:

- a. Receive any oral or written information regarding child who may be a child in need of protection or services;
- b. Initiate a prompt and thorough investigation within twenty-four (24) hours following a report or information regarding a child-in-need-of-care, which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests;
- c. Seek assistance of and cooperate with law enforcement officials within twenty-four (24) hours after becoming aware that one or more of the following conditions exist:
 - i. Abuse or neglect is suspected cause of a child's injuries;
 - ii. Abuse or neglect that results in severe physical, mental or emotional injuries to the child, which requires medical treatment or hospitalization. For purposes of this subsection, "severe physical injury" means: brain damage, skull or bone fracture, subdural, dislocation of joints or bones, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other visible physical injury that impairs the health or physical well-being of a child;
 - iii. Abuse or neglect is suspect cause of a child's death;
 - iv. The child is a victim of suspected sexual abuse or sexual exploitation;
 - v. Law enforcement intervention is necessary for the protection of the child, the protective/social service worker, or any other person involved in the investigation; or
 - vi. Any alleged abuser or perpetrator of the child's injury is not a person responsible for the child's health or welfare.

- (4) Grounds for Probable Cause. The social service worker shall substantiate whether there is probable cause to believe that the child is in need-of-care;
- (5) Taking a Child Into Custody. If necessary for the safety and well being of a child, pursuant to Section 1-504, law enforcement officials shall cooperate with social service worker to remove a child from the custody of his or her parent(s), guardian(s), or other custodian(s).
- (6) Post-Investigation Assessment. After an investigation, social service worker(s) shall assess the risk to the remaining children in the home and all other facts or matters found to be relevant and pertinent;
- (7) Offer Services. The social service worker(s) shall offer appropriate services to the family of any child found to be in-need-of-care;
- (8) Written Report. Within seventy- two (72) hours after a referral of a potential child in need of protection or services, the social worker shall submit a written report of his or her investigation and an evaluation to the Children's Court, which shall be included in the files maintained by the social workers and shall include a determination as to whether the report was substantiated or unsubstantiated; and
- (9) Completion of Investigation. Upon completion of the investigation by the local law enforcement agency or the social service worker(s), the law enforcement agency or the social service worker may inform the person who made the report as to the disposition of the report.

(F) Indian Child Welfare Act (ICWA) representative. If applicable, an ICWA Representative shall be appointed by the Children's Court.

(1) Duties.

- (a) The ICWA representative shall adhere all procedural requirements within 25 U.S.C. § 1901 et seq. of the Indian Child Welfare Act.

(G) Cooperation of Law Enforcement Officials. Law enforcement officials shall cooperate with the social service workers and the ICWA representative in conducting investigations pursuant to this Code.

ARTICLE 4- RIGHTS AND RESPONSIBILITIES

1-401 PURPOSE.

- (A) This Court shall have the broadest of powers provided under the Spirit Lake Constitution and the Spirit Lake Law and Order Code to construct orders and fashion any remedy to ensure that all of the followings rights and responsibilities are adhered to in order to protect the best interests of the children under the jurisdiction of the Spirit Lake Children's Court; and
- (B) All parties have a right to be represented by an advocate/attorney at their own expense or, if qualified, may choose the services provided by the Tribe in all proceedings under this code, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the Court.

1-402- RIGHTS AND RESPOSIBILITIES OF THE PARENT

(A) The rights and responsibilities of the parent(s) of the child in the temporary custody of another person, agency, or institution, including foster care placement, other than the natural or biological parent(s) are:

- (1) The right to visitation at the discretion of the Spirit Lake Tribal Courts.
- (2) The right to consent to, be informed of, and to be involved in determining the medical, mental, and physiological needs the of the child.
- (3) The right to choose the child's religion.
- (4) The right to be involved in planning for the child.
- (5) The right to be treated with respect and have information be kept confidential unless otherwise set forth by this Code or the Spirit Lake Tribal Court; and
- (6) The rights to be provided with active efforts.

1-403 RIGHTS OF THE CHILD

(A) The rights of the child in foster care or in the custody of another person, agency, or institution other than the parent(s) are:

- (1) The right to visit the parent, guardian, and Indian custodian, siblings, or extended family at the discretion of the Spirit Lake Tribal Courts;
- (2) The right to be continuously nurtured;
- (3) The right to adequate food, clothing, and shelter;
- (4) The right to inheritance, unless otherwise modified by a Spirit Lake Tribal court order;
- (5) The right to adequate nutrition, housing and medical services;
- (6) The right to be involved and informed of planning, if of the appropriate age deemed by the Spirit Lake Tribal Court;
- (7) The right to be supervised by the agency or other person having care and control of the minor;
- (8) The right to have best interests represented by a Guardian ad Litem whenever deemed appropriate by the Spirit Lake Tribal Court;
- (9) The right to special education and treatment that is appropriate to their needs, when a child is physically or mentally handicapped;
- (10) The right to understanding and love by parents, guardians, or other custodians;

- (11) The right to protection against all forms of neglect, cruelty and exploitation; and
- (12) The right to be brought up in a spirit of understanding, tolerance, friendship among peoples, and any other culture values of the Spirit Lake Tribe.

1-404 RIGHTS AND RESPONSIBILITIES OF FOSTER PARENTS

(A) The rights and responsibilities of the foster care parent(s) are:

- (1) To be appropriately informed for purpose of planning for the child;
- (2) To provide food, medical, and clothing for the child;
- (3) To provide shelter for the child;
- (4) To meet the emotional needs of the child;
- (5) To receive assistance from the supervising social service agency to appropriately meet the needs of the child;
- (6) To keep the supervising agency informed of the needs of the child;
- (7) The responsibility of safeguarding and keeping secret any information that would be detrimental to the child and parents;
- (8) To attend continued required education regarding foster care parenting, the needs of foster care children, and planning for the children;
- (9) To obtain emergency medical treatment for the child;
- (10) To continuously monitor the child appropriately; and
- (11) To continuously nurture the child.

1-405 RIGHTS AND RESPONSIBILITIES OF SOCIAL SERVICE AGENCIES

(A) Any social services agency has the duty and responsibility to prevent out-of-home placement whenever possible, promote family reunification, and shall:

- (1) Work with the child's tribe and family to develop an alternative plan to out-of-home placement and to ensure that adequate, appropriate, protective, and corrective services are provided through active efforts which includes acknowledging traditional helping and healing systems of an Indian child's tribe and using these systems as the core to help and heal the Indian child and family;
- (2) Review and track all child abuse and/or neglect cases, which have been referred under Spirit Lake Tribal Court jurisdiction;
- (3) Before making a decision that may affect an Indian child's safety and well-being or when contemplating out-of-home placement of an Indian

child, seek guidance on family structure, how the family can seek help, what family and tribal resources are available, and what barriers the family faces;

- (4) Provide services and resources whenever possible to relatives who are considered the placement option for a child, as agreed to overcome barriers to providing care to a child; and
- (5) Services and resources shall include but are not limited to childcare assistance, financial assistance, housing resources, emergency resources, and foster care licensing assistance and resources.

(B) Confidentiality. All records, information, and reports prepared, acquired, received, or reviewed by an employee of any social services agency are confidential and shall only be disclosed or dispersed pursuant to this Children’s Code or any other governing Spirit Lake Tribal Law. Those found to be in violation of the confidentiality rules shall be held accountable by the laws of the Spirit Lake Tribe.

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ARTICLE FIVE: REPORTING, REMOVAL, AND PLACEMENT

1-501 Reporting Abuse and Neglect.

(A) Who Must Report. In general, a person who, while engaged in a professional capacity or activity described in subsection (b) on Tribal land, in a Tribally operated or Tribally contracted facility, within the exterior boundaries of the Spirit Lake Reservation or on Spirit Lake Tribal Territory, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, shall as soon as possible make a report of the suspected abuse to the law enforcement agency, the Spirit Lake Tribal social services or Bureau of Indian Affairs social services.

(b) Covered professionals persons engaged in the following professions and activities are subject to the requirements of subsection (A):

- (1) Physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians,

ambulance drivers, undertakers, coroners, medical examiners, alcohol or drug treatment personnel, and persons performing a healing role or practicing the healing arts.

(2) Psychologists, psychiatrists, and mental health professionals.

(3) Social workers, licensed or unlicensed marriage, family, and individual counselors.

(4) Teachers, teacher's aides or assistants, school counselors and guidance personnel, school officials, and school administrators.

(5) Child care workers and administrators.

(6) Law enforcement personnel, probation officers, criminal prosecutors, and juvenile rehabilitation or detention facility employees.

(7) Foster parents.

(8) Commercial film and photo processors.

Those persons required to report shall immediately cause such reports to be made to the responsible social services agency, law enforcement. Oral reports shall be followed by written reports within seventy-two (72) hours by those mandated to report; and

Those persons mandated by Section 1-501 to report a case of known or suspected child abuse or neglect, who knowingly fails to do so or willfully prevents someone else from doing so, shall be held accountable by and answer to the laws of the Spirit Lake Criminal Code and subject to the penalties thereof.

(B) Who Is Encouraged to Report. A person who knows or has reasonable suspicion that a child has been abused or that present actions will result in the abuse of a child may report such abuse or actions to Spirit Lake Tribal social services or Bureau of Indian Affairs social services.

(C) Basis for Report. Any person who makes a report pursuant to this section in bad faith for the purpose of harassing those identified in the report, without reasonable cause to believe the report is true, shall be held accountable by and answer to the laws of the Spirit Lake Criminal Code and subject to the penalties thereof.

(D) Confidentiality of Reporter. Any person, other than the alleged perpetrator,

acting in good faith makes a report of child abuse or neglect pursuant to this Code or who testifies in any judicial proceeding arising from such report shall:

- (1) Be immune from any liability, civil or criminal liability, that otherwise might result from such report or testimony; and
- (2) **Those persons reporting, except those specified in Section 1-501**, may remain anonymous.

(E) Reporting Truancy. Any employee of the child's school who is aware that the child not attending school is obligated to notify the Spirit Lake Tribal social services agency or other appropriate social services agency, of such non-attendance. The Tribal social services agency shall investigate every such complaint within forty-eight (48) hours and take appropriate action to get the child into school if he is not attending.

(F) Substance Abuse During Pregnancy.

(2) Jurisdiction. The Spirit Lake Tribal Court has jurisdiction of a pregnant woman who engaged in abuse of alcohol or a controlled substance upon a showing by a preponderance of the evidence that the woman is pregnant and abusing alcohol or controlled substance while pregnant.

(3) Court Order. Upon establishing jurisdiction, the Court may enter orders regarding such person requiring her to refrain from substance abuse, submit to reasonable measures to assure her continued non-use, and comply with a community based program or inpatient treatment program. Such court orders may be enforced through the Spirit Lake's Tribal Court's civil contempt power.

(4) Privileged Information. Information that is made available pursuant to the Court's order regarding a woman's drug or substance abuse use during pregnancy may not be used in any criminal prosecution against the woman.

(G) Interviewing the Child. When the validation of a report of child abuse, neglect, exploitation can be accomplished only through an interview with the child, this contact may take place in the school, hospital, other medical facility or child care facility, with private access to the child facilitated by the administrator or officer who is presumed acting in good faith.

(H) Disclosure of Information. During the process of investigation, there may be a need to gather information that is reasonably necessary to the investigation such as school records, police records, medical records, photographs and records of other agencies.

(1) Such information shall be requested of the administrative officer of the facility, with civil immunity afforded much administrator/officer who is presumed acting in good faith.

(I) Photographs and X-Rays. Any person mandated by this Code to report known or suspected child abuse, neglect or deprivation may:

- (1) Take color photographs of the areas of the injury visible on the child who is the subject of a report and if indicated after medical examination; or
- (2) Have a radiological examination performed on the child without the consent of the child's parents, guardian, or other custodian.
- (3) All photographs pursuant to this Section of the Code may be taken by law enforcement upon the request of any person required to report under this Code; and
- (4) All photographs and x-rays taken or copies thereof shall be made available to the Court at the time of the

adjudicatory hearing, emergency hearing, or any other hearing involving the child whom is the subject of said photographs or x-rays.

(J) Legal Authority for Examining Physician. Authority hereby is granted under this Code, giving any physician examining any child under the Spirit Lake Tribe's jurisdiction, who is a suspected victim of child abuse or neglect, the right to medically exam the child without written or verbal consent of the parent, guardian, or other custodian.

(K) Protective Custody by Physician. Any physician examining a child that is a suspected victim of child abuse or neglect, after reasonable attempts to advise the parents, guardian, or other person having any responsibility for the care of the child may, if it appears that the child's health, safety, or welfare is in immediate danger:

- (1) Keep the child in the custody of the hospital or medical facility for a period of time that does not exceed seventy-two (72) hours; and
- (2) The examining physician must notify the Spirit Lake Tribal Court within six (6) hours of examining the child.
- (3) Upon the sworn testimony of the examining physician, the Court may order emergency medical care for a child, who is the subject of a child protection petition, pending the services of the summons and petition upon the parents of the child named in said child protection petition.

1-502 INVESTIGATION AND REMOVAL.

(A) Investigative Orders. The court may order investigation and discovery, including but not limited to, taking of photographs, gathering physical evidence, and examinations or evaluations of a child, parent, guardian or custodian, conducted by a physician, dentist, psychologist, or psychiatrist, upon a showing of probable cause to believe that a child is a child in need

of protection or services, the order may be done ex parte.

(B) Emergency Removal Without a Court Order. If the Court finds probable cause to believe that the child is in need of protection or services and the conditions in which the child is found present a substantial risk of harm to the child's life, physical health or mental well being then the Court:

- (1) May order the child to be taken into custody, upon application by any person, which may be ex-parte; and
- (2) The Court may include in such an order:
 - a. An authorization to enter a specified premises to remove the child, gather evidence; or
 - b. To place the child in protective custody pending a preliminary hearing for no more than 72 hours, excluding Sundays and holidays recognized by the Spirit Lake Tribal Courts

(C) Grounds for Removal Without a Court Order. A child may be taken into protective custody without a court order by a law enforcement officer or the tribe's child protection services worker if such person has:

- (1) Probable cause to believe that the child is in need of protection or services;
- (2) Failure to remove the child may result in a substantial risk of death, serious injury or serious emotional harm; and
- (3) The parent, guardian, or other custodian is absent and it appears, from the circumstances, that the child is unable to provide for his or her own basic needs of life and no satisfactory arrangements, except removal, are available to protect the child.

(D) Notice of Removal to the Spirit Lake Tribal Courts. After a child is removed from his or her home, notice must be given by the person who removed the child from the home to the Court, and the person who removed the child from his or her home must:

- (1) Attempt to contact the presenting officer within six (6) hours of removal;

- a. The attempt to contact the presenting officer shall be documented; and
- b. The removing person shall make actual notice to the Court, no later than 12:00 o'clock noon the next Court working day.

(E) Notice to the Parent, Guardian, or Custodian. The person removing the child shall:

- (1) Make all active efforts to notify the parent(s), Indian custodian, or guardian, within twelve (12) hours of the child's removal;
- (2) Active efforts shall include in-person communication, telephone, and written contacts at their residence, place of employment, or other location where the parent, guardian, or other custodian is known to frequent; and
- (3) If the parent, guardian or other custodian can not be found or otherwise notified, notice shall be given to the members of the extended family of the parent, guardian, or other custodian, as well as the extended family of the child in custody.

(L) Notice to a Child's Tribe. If any Court of the Spirit Lake Tribe asserts jurisdiction over a person who is a member of an Indian tribe or historic band other than the Spirit Lake Tribe, the Court shall notify the Tribe or Tribal Court of the non-Tribal member Indian child, so that appropriate notice and jurisdiction can be asserted.

1-503 PLACEMENT OF CHILDREN.

(A) Restrictions. A child alleged to be a child in need of protection or services shall not be placed in a jail or other facility intended or used for incarceration of adults charged with criminal offense or for the detention of children alleged to be juvenile offenders.

(B) Placement Preferences. A child may be placed in the following community based shelter care facilities listed in order of preference to be followed:

- (1) Members of the child's extended family;

- (2) An Indian family of the Spirit Lake Tribe, which is licensed as a foster or home or an Indian family otherwise authorized by law to provide care for the child;
- (3) A facility operated by a licensed Indian child welfare services agency; or
- (4) Any other suitable placement which meets the standards for shelter care facilities established by the Spirit Lake Tribe.

(C) Removal of the Alleged Perpetrator. If the alleged perpetrator is known and he or she resides in the home of the victim, such perpetrator may be ordered removed from the home.

(D) Least Restrictive Setting. If the child cannot be returned to his or her parents, Indian custodian, and guardian, the child shall:

- (1) Be placed in the most restrictive setting which most approximates a family and in which his or her special needs, if any, may be met; and
- (2) The child shall also be placed in reasonable proximity to his or her home taking into account any special needs of the child, physically or mentally.

1-504 FILING A CHILD PROTECTION PETITION.

(A) Who May File a Child Protection Petition. Any person may file a complaint with the Spirit Lake Tribal Court, the Spirit Lake Tribal Social Services Agency, the presenting officer, law enforcement, or the Children's Court alleging that the child is in need of protection or services.

(B) Formal Proceedings. The presenting officer, or the child protective services worker or the program director if the presenting officer is not available, may initiate formal child protection proceedings by filing a child protection petition in the Children's Court on behalf of the Tribe and the best interests of the child.

(C) Emergency Action Not Precluded. Nothing in this Section shall preclude law enforcement or child protective services personnel from taking emergency action.

(D) Time Limitations. If a child has been removed from the home, then a child protection petition shall be filed with Children's Court within three (3) working days.

(E) Contents of the Petition. The petition shall set forth the following:

- (1) The name, birth date, sex, address, and all known tribal affiliations of the named child;
- (2) The basis for the Court's jurisdiction;
- (3) The specific allegation which cause the child to be a child in need of protections or services;
- (4) A plain and concise statement of the facts upon which the allegations of the child in need of protection or services are based, including the date, time, and location at which the alleged facts occurred;
- (5) All known names, addresses, and tribal affiliation of the child's parents, Indian custodians, or guardians;
- (6) The names, relationship to child, and addresses of all known members of the child's extended family and all former care givers, if known; and
- (7) If the child is placed outside of the home, the agency with whom the child is placed, the fact necessitating the placement and the date and time of the placement.

1-505 SERVICE OF SUMMONS, NOTICES OF HEARINGS, AND SUBPOENAS.

(A) General. A Party shall be given notice of a proceeding in the Children's Court in any manner authorized by this Children's Code or rules of the Spirit Lake Tribal Court, unless the Court is unable to notify the party, after a reasonable effort to make such notification.

(B) Service. The summons of service shall be issued and served on the following: parent(s), guardian(s) or custodian(s), or the person with whom the child resides if not a parent or a court-ordered custodian.

(C) Contents of Summons. The summons shall direct the person to whom it is addressed to appear with the child in any proceeding with the Children's Court, unless the child's appearance has been excused or deemed unnecessary. The summons must specify the following:

- (1) Provide the time and place of the proceeding;
- (2) Identify the nature of the proceeding;
- (3) Include a prominent notice that the proceedings could result in a suspension or termination of parental rights; and
- (4) Have a copy of the petition attached to the summons.

(D) Manner and Time of Serving Summons. A summons shall be served as follows:

- (1) Personal Service. A summons required under this Code must be served by delivering the summons to the party personally. A summons by personal service shall be completed within fourteen (14) – before a child is adjudicated a child in need of protection or services and twenty-one (21) days before the initial hearing on a petition to suspend or terminate parental rights;
- (2) Service by Mail. If personal service of the summons is impractical or cannot be achieved, the Children's Court may direct that it be served by certified mail to the last known address of the party. A summons by certified mail shall be completed within fourteen (14) days before adjudication of the child in need of protection or services and a return receipt should be requested twenty-one (21) days before a hearing on a petition to suspend or terminate parental rights;
- (3) Substituted Service. If the Court finds that service cannot be made because the whereabouts of the person to be summoned has not been determined through reasonable efforts, the Court may direct any manner of substituted service.

(4) Notice of Hearing.

- (a) Persons Entitled to Notice: The Court shall insure that the following persons are notified:
- (1) The parent(s);
 - (2) The attorney(s) for the parent(s);
 - (3) The child or advocate for the child;
 - (4) The legal guardian(s) or custodian(s) other than the parent(s), if any;
 - (5) The petitioner;
 - (6) The child-placing agency or protective/social worker;
 - (7) The ICW Worker, if applicable
 - (8) The juvenile officer, if applicable;
 - (9) The guardian ad litem; and
 - (10) Any other party the Children's Court directs to be notified.

- (b) General. Notice of hearing must be provided in writing at least seven (7) days prior to the hearing.

- (c) Preliminary Hearing. When a child is placed out of the home, active efforts shall be made to notify the parent(s) of the child or extended family, pursuant to applicable section of this Code as soon as the hearing is scheduled. The notice may be in person, in writing, or by telephone.

- (d) Suspension of Parental Rights. Notice of a hearing on the suspension of parental rights must be given in writing or be on the record at least twenty-one (21) days before the hearing.

- (e) Termination of Parental Rights. Notice of a hearing on a petition to terminate parental rights must be given in writing or be on the record at least twenty-one (21) days before the hearing.

- (f) Subpoenas. On its own motion, the attorney for a party or the Children's Court may cause a subpoena to be served on a person whose testimony or appearance is desired or necessary. It is not

necessary to tender advance fees to the person serving a subpoena in order to compel attendance. If a party fails to comply with a subpoena issued by the Children's Court, the Children's Court may hold the non-compliant party in contempt, issue monetary sanctions, or a warrant for arrest.

(g) Waiver of Service. A person entitled to notice may waive notice of hearing or service of process. If the waiver is in writing, the waiver shall include the following:

- a. Name of the party;
- b. Address of the party;
- c. A statement or expression of waiver;
- d. Signature of party; and
- e. Date of signature.

(h) Subsequent Notices. After a party's first appearance before the Children's Court, subsequent notice of proceedings and pleadings shall be served on that party, either personally or by ordinary, non-certified mail. If the party has retained an attorney, the subsequent notice of proceedings and pleadings shall be served on the party's attorney, either personally or by ordinary, non-certified mail. A summons must be served before trial, suspension of parental rights hearing or termination of parental rights hearing as provided by this Code, unless a prior court appearance of the party was in response to the service by summons.

1-506 PRELIMINARY HEARING.

(A) Child Released to Parent. If the child continues in the care of the parent, guardian, or custodian, the Children's Court shall conduct a hearing within seven (7) days after the filing of the petition to determine whether probable cause exists to believe that the child is a child in need of protection services.

(B) If the child is placed out-of-home, the Children's Court shall conduct a preliminary hearing within two (2) days after the filing of the petition to determine:

- (1) Whether probable cause exists to believe that the child is in need of protection or services;
- (2) Whether the home conditions continue to present a substantial risk of harm to the child's life, physical health, emotional, spiritual or mental well-being; and
- (3) Whether any alternative, except the removal of the child from the home, is available to adequately protect the child from such risk.

(C) Parent, Guardian or Custodian Not Present. If the child's parent(s), guardian(s) or custodian(s) is not present at the preliminary hearing, the Children's Court shall make an inquiry into what efforts have been made to notify and obtain the presence of the parent or legal guardian. If it appears that further efforts are likely to produce the child's parent, guardian, or custodian, the Children's Court shall recess for not more than forty-eight (48) hours and direct the petitioner to make continued efforts to obtain the presence of the child's parent or legal guardian. The preliminary hearing may be conducted in the parent's absence.

(D) Preliminary Hearing Procedure. The Children's Court shall perform the following procedure:

- (1) Advise the parent or legal guardian of the right to have counsel represent them, at their own expense, or if qualified may choose to use the services provided by the Tribe;
- (2) Advise the parent or legal guardian of their right to a trial on the allegations in the petition;

- (3) Advise the parent or legal guardian of their right to admit or deny any or all allegations stated in the petition;
- (4) Appoint a guardian ad litem for the child.

(E) Establishing Probable Cause. When determining whether probable cause exists to believe that the child is in need of protection or services the Children's Court.

(F) Probable Cause Not Found. If probable cause is not found the Children's Court shall dismiss the petition, and the child shall be released to his or her parent(s), guardian(s) or custodian(s).

(G) Probable Cause Found. If the Court finds that probable cause exists to believe that the child is in need of protection or services, the Children's Court:

- (1) May accept a plea of responsible, not responsible, or no contest to the allegations in the petition from the parent or legal guardian in which the Children's Court would schedule a Deposition Hearing; or
- (2) Shall order the parent or legal guardian to appear at an adjudication hearing on a date and time scheduled by the Children's Court, if the parent or legal guardian does not respond, remains silent or pleads not responsible to the allegations in the petition; and
- (3) May release the child into the custody of either the child's parent or legal guardian under such reasonable terms and conditions as are necessary for either the physical, emotional, or mental well-being of the child; or
- (4) May order placement of the child with someone other than a parent, guardian, or custodian if the Children's Court, after the hearing, determines that both of the following conditions exist:
 - a. Custody of the child with a parent or legal guardian present a substantial risk of harm to the child's life, physical health, emotional, spiritual or mental well-being, and no provision of

services or other arrangement except removal the child, is reasonably available to adequately protect the child from such risk; and

- b. Conditions of custody of the child out-of-home from parent or legal guardian are adequate to protect the child's health and welfare.

(H) Court Ordered Evaluations and Assessments. The Children's Court may at any time after conducting a preliminary hearing, at which probable cause is found, order the child, parent or legal guardian, or any family member or extended family member to undergo the following assessments by a qualified professional:

- (1) A criminal background check;
- (2) A psychological evaluation; or
- (3) A substance abuse evaluation or assessment.

1-507 ADJUDICATION HEARING.

(A) Purpose. The Children's Court shall conduct an adjudication hearing for the purpose of determining whether the child is in need of protection or services.

(B) Commencement. The adjudication hearing shall commence no later than thirty- (30) days after the petition is filed with the Children's Court.

(C) Continuances. A continuance of an adjudication hearing may be granted by the Children's Court, but only:

- (1) Upon stipulation of the parties;
- (2) Where process cannot be completed;
- (3) Where the Children's Court finds that the testimony of a unavailable witness is needed;
- (4) Where a parent, guardian, or custodian requests an opportunity to obtain legal counsel, with a time limitation at the discretion of the Court; or
- (5) For good cause shown.

(D) Closed Proceedings. All proceedings shall be exclusive to the parties, their counsel, witnesses, and other persons determined necessary or useful to the proceedings by the Children's Court.

(E) Evidence.

(1) Formal Rules Do Not Apply. The formal rules of evidence shall not apply to these proceedings. All relevant and material evidence that is determined by the Court reliable may be admitted at the proceedings and trial and may be relied upon by the Children's Court to the extent of its probative value.

(2) Cross Examination. The parties shall be afforded an opportunity to examine written reports received by the Children's Court and shall be allowed to cross-examine all witnesses who were involved in the production of such reports, subjected to the availability of the witnesses.

(a) Written Reports. Written reports may be produced and transmitted by the child protective service workers, any ICWA workers, or presenting officer/tribal attorney, or attorney working for the Children's Court.

(3) Remote Appearance. The Children's Court may rely upon conference telephone calls or other electronic devices that permit all those appearing or participating to hear and speak to each other.

(F) Burden of Proof. The ICWA worker or the applicable social services agency has the burden of proving the allegations in the petition by a preponderance of the evidence. If the Children's Court finds that the social services agency met its burden of proof, the Court shall find the child to be in need of protection or services, under the jurisdiction, care or custody of the Court.

1-508 DISPOSITION HEARING.

(A) Disposition Immediately Following Adjudication. A disposition hearing shall be held following the adjudication for:

(1) Child in Placement. When the child is in placement, the time interval may not be more than thirty (30) days, except for good cause.

(2) Notice. If the disposition is not held immediately after the adjudication, notice of hearing shall be given by scheduling it on the record within thirty (30) days.

(B) Proposed Case Service Plan. The ICWA worker shall prepare a written report that includes the following:

- (1) A proposed case plan for the care of and assistance to the child, the parent or legal guardian;
- (2) Solutions designed to resolve the problem;
- (3) Detailed explanation for the necessity of the proposed disposition plan and its benefits to the child;
- (4) Specific reasons underlying placement recommendation, if the report recommends placement of a child somewhere other than with the child's parent(s), guardian(s), or custodian(s); and
- (5) Scheduled due date, which shall be presented to the Children's Court, the child advocate, and the presenting officer/tribal attorney, by at least three (3) days prior to the disposition hearing.

(C) Report Reviewed Prior to Disposition Hearing. All the parties and their representatives prior to the disposition hearing shall be provided with the ICW Program worker's report

(D) Disposition Orders.

- (1) Order of Disposition. The Children's Court shall enter an order of disposition after considering the case service plan and other evidence offered bearing on disposition. The Children's Court shall approve a case service plan order compliance with all or part of the case service plan. The Disposition Order shall:

- a. State whether active efforts have been made to protect the best interests of the child;
- b. Permit the child to remain with his or her parent or legal guardian subject to such conditions as the Children's Court may order;
- c. Place the child with a relative within the service area of the Spirit Lake Reservation, subject to the conditions as the Children's Court may order;
- d. Place the child in a group home or residential care facility designated by the Children's Court; or
- e. Order the **presenting officer or Spirit Lake Tribal Attorney** to file a petition to **suspend or terminate the parental rights** under this Code.

(E) Child Support. Parents, guardians, or custodians may be ordered by the Court to make child support payments for a child placed with relatives or friends who are not eligible for foster care payments or when payments are not sufficient to cover the cost of caring for the children.

1-509 DISPOSITION REVIEW HEARING.

(A) Review. The disposition order may be reviewed at the discretion of the Court, but it shall be reviewed at least once every ninety (90) days.

(B) Scope/Content of Review. At a review hearing, the Children's Court shall review, on the record, the compliance and efforts made with the case plan pursuant to previous orders of the Children's Court, including the following:

(1) Services. Compliance with the case plan with respect to the services provided to the child and the parent or legal guardian, and whether the parent or legal guardian has complied with and benefited from those services.

(2) Visitation. Compliance with the case plan with respect to visitation with the child. If visitation did not occur or was infrequent, the Children's Court shall determine why visitation did not occur or

was infrequent. The Children’s Court may question the parent or legal guardian as to any discrepancy to the non-occurring or infrequent visitation.

(3) Continued Separation. Any likely harm to the child if the child continues to be separated from the parent or legal guardian.

(4) Reunification. Any likely harm to the child, if the child is returned to the parent or legal guardian.

(C) Extent of Progress. After review of the case plan, the Children’s Court shall determine whether the conditions that caused the child to be in need of protection or services have been addressed. The Court may modify the case plan, including, but not limited to, the following:

(1) Additional Services. Prescribing any additional services that are necessary to rectify the conditions that caused the child to become or to remain a child in need of protection or services.

(D) Continued Placement. At a review hearing, the Children’s Court shall determine the continuing necessity and appropriateness of the child’s placement.

(E) Remains in Placement. If the child remains in placement, the Children’s Court shall determine at each review hearing whether the case should be review before the next review hearing or at least every ninety –(90) days. In making this determination, the Children’s Court shall consider, but not be limited to, both of the following:

(1) Parent’s Efforts. The parent or legal guardian’s efforts make necessary changes to provide a safe and suitable environment for the child.

(2) Early Return. Whether there is a reasonable likelihood that the child may be returned to his or her home prior to the next hearing.

(F) Return Without Hearing. The Children's Court may issue an order without a hearing permitting the agency to return the child to his or her home if:

- (1) No less than three- (3) days notice is given to all parties prior to the return of his or her home; and
- (2) No party requests a hearing within the seven (7) days.

(G) Agency Report. An agency report shall be filed with the Children's Court at least three (3) working/business days prior to the hearing and copies provided to all parties or their representatives.

1-510 PERMANENCY PLANNING HEARING

(A) Timeline. If a child remains adjudicated as a child in need of protection or services and parental rights have not yet been terminated, the Court shall:

- (1) Conduct a permanency planning hearing not more than twelve (12) months after entry of the order of disposition and every twelve (12) months thereafter, so long as the child remains a child in need of protection or services; and
- (2) The scope of review when conducting a permanency planning hearing is to review the status of the child and the progress made toward the child's return to his or her parent, Indian custodian, or guardian, or to some permanent home.

(B) Parent Rights Not Terminated. The Court shall order the child returned to his or her parent or legal guardian if:

- (1) The parental rights of the child have not been terminated; and
- (2) The Court determines that the return of the child would not cause a substantial risk of the harm to the child's health, safety, or welfare;
- (3) The Court shall review the failure of the parent to substantially comply with the terms and conditions of the court ordered case plan and disposition orders of the Court as evidence that the return of the child to his or her parent,

Indian custodian, or guardian, would cause substantial risk to the child's health, safety, or welfare.

(C) Alternative Permanent Placement Plans. If the Court determines at a permanency planning hearing that the child should not be returned to his or her parent, Indian custodian, or guardian, the Court shall propose one of the following alternative permanent placement plans:

- (1) That the child be placed permanently with a relative within the primary service area of the Tribe;
- (2) That the child be placed permanently with a relative who is outside the primary service area of the Tribe;
- (3) That the child remain in long-term foster or residential care;
- (4) That a petition for guardianship under this Code be filed by the current caretaker of the child; or
- (5) That a petition to terminate parental rights under this Code be filed by the presenting officer;

1-511 SUSPENSION OF PARENTAL RIGHTS.

(A) Rights of Parties in Suspension of Parental Rights Proceedings. In addition to any other rights afforded under the Indian Civil Rights Act, 25 U.S.C. Sections 1301-03 (1968), as amended or enumerated within governing Tribal law.

- (1) A biological parent has the right to refuse services provided by an social services agency, however, their refusal to accept services may have a significant impact on their ability to have contact with their child;
- (2) The petitioner and respondent have the right to have reasonable notice and to attend any hearing arising out of the filing of a petition for suspension of parental rights;
- (3) The biological parents and the petitioner have to right to be represented by counsel at their own expense, or, if qualified, may use the services provided by the Tribe, at all proceedings;
- (4) The biological parents and the petitioner have the right to summon and examine witnesses; and
- (5) The biological parents and the petitioner have the right to seek independent medical, psychological or psychiatric evaluations of the child at their own expense.

(B) Petition to Suspend Parental Rights.

- (1) Any adult or agency possessing custody of a minor child may file a petition with the Court Administrator seeking an order for the permanent suspension of the parental rights of a parent of a child.
- (2) The petition shall contain the following information:
 - a. The name, address and telephone number of the child's tribe;
 - b. The name, address, telephone number and age of the child's parent whose parental rights are to be suspended;
 - c. The name, address, and telephone number of the petitioner and the petitioner's relationship, if any; to the child;
 - d. A statement as to why an order for the suspension of parental rights of the parent is in the best interests of the child and the child's tribe.
- (3) The petitioner shall sign the petition and shall affirm under oath that the contents are true and correct except as to those matters based upon belief and, as to those matters, the petitioner reasonably believes them to be true.

(C) Notice of Hearing on Petition to Suspend Parental Rights. Upon the filing of a petition seeking an order for the suspension of parental rights, the Court Administrator shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon the petitioner; the child's tribe; the child's parent(s); family members; caretaker, if any; and appropriate agencies of the Tribe which may either have an interest in the proceedings or be of assistance to the court in adjudicating the matter. Such notice shall be served in the manner provided for in the procedural rules of the Spirit Lake Tribe .

(D) Attendance at a Suspension of Parental Rights Hearing.

- (1) The parents, family members, agencies and petitioner shall be present at the hearing in person unless he or she has waived the right to appear in a writing executed before the Court

Administrator or a notary and filed with the court or unless the parent is unable to attend by reason of a medical condition as evidenced by a written statement from a licensed physician or other appropriate professional;

- (2) The petitioner shall be present at the hearing. The petitioner's failure to appear shall be grounds for dismissal of the petition.
- (3) The parent(s) named in the petition shall also be present. The parent(s) failure to appear shall not prevent the issuance of an order for suspension of parental rights.

(E) Conduct of the Suspension Hearing.

(1) The court shall inform the parent of their rights under this code and of the nature and consequences of the proceedings;

(2) The court shall further inform all other parties of their rights under governing Tribal law and pursuant to the Indian Civil Rights Act, 25 U.S.C., Section 1301-03 (1968), as amended, including the right to summon and cross-examine witnesses;

(3) The rules of evidence of the Tribal Court shall apply;

(4) The burden of proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be clear and convincing evidence. There shall be a legal presumption of the parent's ability to parent until proven otherwise; and

(5) The court may continue the hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary orders, if any, as may be deemed just and reasonable to carry out the purposes of this Code.

(F) Record of Proceedings. In all proceedings the court shall take and preserve an accurate stenographic or recording of the proceedings.

(G) Findings. In all cases, the court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order. The court may make findings that it is in the child's best interests that a final

order suspending the parental rights be entered and the court shall specify the basis of those findings.

(H) Final Order of Suspension of Parental Rights. A. If the court determines that it is in the best interests of the child and the child's tribe, it shall issue a final order for a suspension of parental rights. Such an order for the suspension of parental rights may include, but is not limited, to the following:

(1) A permanent suspension of the parental rights of the parent including the suspension of the right to the care, custody and control of the minor child and allowing the child to be adopted;

(2) A permanent suspension of the right of the parent to have contact with the minor child including contact in person, by mail, by telephone or through third parties or the order may allow for a contact agreement agreed upon by the parties to be ordered by the court;

(3) Restraining a parent from contacting the minor child, the child's foster parent, the child's adoptive parent and/or the social services agency or agencies possessing information regarding the minor child;

(4) Ordering that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated;

(5) Ordering that any prior court order for custody, visitation or contact with the minor child is hereby terminated;

(6) The parent shall have no standing to appear at any future legal proceedings involving the child;

(7) The suspension of parental rights does not sever or affect in any way a child's relationship to his/her tribe or any rights of inheritance from the biological parent(s);

(8) Shall contain a statement regarding why it is in the best interests of the child and the child's tribe to enter this order;

(9) Copies of any order for suspension of parental rights shall be served upon the parent and the agency or agencies having legal custody of the child and any other parties as directed by the court; and

(10) Final orders for suspension of parental rights may be reviewed by the court at the request of the biological parent, the agency or agencies possessing custody of the child only if one of the following occurs:

a. If there is no final permanency order in effect after a period of one (1) year after the entry of the final order suspending parental rights; the adoption of the child fails; or

b. The adoptive parent is deceased. Notice of this review shall be provided to all parties to the hearing at which the final suspension of parental rights order was issued.

1-512 TERMINATION OF PARENTAL RIGHTS

(A) Who May File. One parent may file a termination of the parent-child relationship between the other parent and child.

(1) A petition for involuntary termination will not be accepted unless a petition for adoption is filed along with the petition to terminate parental rights;

(2) The Tribe, acting on behalf of child protection services may file a petition to terminate parental rights with respect to either or both parents; and

(3) A petition for involuntary termination of parental rights will not be accepted unless the petition is filed along with the petition to terminate.

(B) A Petition to Terminate Parental Rights. The petition to terminate a parent-child relationship shall include:

- (1) The name and place of residence of the petitioner;
- (2) The name, sex, date and place of birth, and place of residence of the child;
- (3) The relationship of the petition to the child, if any;
- (4) The name, address, and date of birth of the parents, if known;
- (5) Where the child's parent is a minor, the name and addresses of the child's grandparents, if known;
- (6) The name and address of the person having legal custody or guardianship of the child, or acting in the place of the parent for the child; and
- (7) The ground(s) on which termination of a parent child relationship is sought.

(C) Voluntary Termination of Parental Rights. A parent may petition to voluntarily terminate their parental rights if the petition is filed along with the petition for adoption. The voluntary petition to terminate shall include:

- (1) The name and place of residence of the petitioner;
- (2) The name, sex, date and place of birth, and place of residence of the child;
- (3) The name, sex, date of birth of the parent(s);
- (4) Where the child's parent is a minor, the name and addresses of the child's grandparents, if known;
- (5) The name and address of the person having legal custody or guardianship of the child, or acting in the place of the parent for the child; and
- (6) The reason(s) for petitioning for a voluntary termination of a parent-child relationship.
- (7) The petition to voluntarily terminate a parent-child relationship shall not be accepted by the Court unless:

- a. The petition to voluntarily terminate is signed by the parent under oath in the presence of the Court;
- b. The petition is signed at least thirty (30) days after the child's birth; and
- c. Is accompanied by a petition for adoption.

(D) Effects of a Termination Order. All rights, duties, responsibilities, and obligations between the parent and child, including the rights of inheritance are terminated by this Order. A termination order shall have no effect on a child's tribal membership, enrollment status, or quantum of Indian blood.

(E) Order for Termination of Parental Rights. If a Court shall find that there is evidence beyond a reasonable doubt that:

(1) The child has continuously and repeatedly been abused, neglected, or been abandoned so as to meet the criteria for a child in need of protection or services under this Code;

(2) The services available cannot adequately reduce the likelihood of further abuse, neglect, or abandonment;

(3) The Court finds that active efforts have been provided throughout all child-welfare proceedings involving the parent or legal guardian and child; and

(4) If Court finds that it is in the best interests of the child to order a termination of the parent-child relationship then the Court shall order such termination of parental rights.

1-513 AUTHORIZATION OF MEDICAL TREATMENT.

(A) Court Authorization. At any time, regardless of whether a child is under the custody and care of the Court, the Court may authorize medical or surgical care for a child when:

- (1) Parent not Available. A parent, guardian, or Indian custodian is not immediately available and cannot be found after active efforts have been made under the existing circumstances of the case; or
- (2) Physicians Opinion. A physician informs the Court orally or in writing that in his or her professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian, or Indian custodian refuses or fails to consent;
- (3) Informal Hearing. If time allows in a situation of this type, the Court shall cause every effort to be made to grant the parent, guardian, or Indian custodian an immediate informal hearing but this hearing shall not be allowed to further jeopardize the child's life.

(B) Religious or Traditional Healing. In making its order regarding the authorization of medical treatment, the Court shall:

- (1) Give due consideration to any treatment being given to the child by prayer or through other spiritual means alone; or
- (2) Through other methods approved by the child's tribal customs, traditions, or religions; or
- (3) If the child's parent, guardian, or Indian custodian are adherents of an established religious denomination that relies on this form of treatment in lieu of medical treatment, or practices of tribal customs, traditions, or religion which is relied upon for such treatment of the child.

(C) Written Authorization. After entering any authorization set forth under this Section, the Court shall reduce the circumstances, findings, and authorizations into formal writing and it enter it into the records of the Court and shall allow a copy of the authorization to be given to the appropriate physician, hospital, or both.

(D) Oral Authorization. Oral authorization by the Court is sufficient for the

purposes of authorizing medical care or treatment to be given.

(1) Oral authorization shall be accepted by any physician or hospital; and

(2) No physician or hospital nor any nurse, technician, or other person under the direction of such physician or hospital shall be subject to criminal or civil liability, in reliance on an oral authorization approved by this Court for the performance of medical care or treatment and any function performed in reliance on such authorization shall be regarded the same as if it were performed with the child's parent, guardian, or Indian custodian's authorization.

1-514 REHEARINGS

(A) Time and Grounds. A party may seek a rehearing or new trial by filing a written motion setting the basis for such relief sought within twenty-eight (28) days after the entry of a final order by this Court.

(1) The Court may entertain an untimely motion for good cause shown; and

(2) A motion may not be considered unless it presents a matter not previously considered by the Court, which if true, would cause the Court to reconsider the matter.

(B) Notice. All parties must be given notice of the motion for rehearing or new trial in accordance with Section 1-505 of this Code.

(C) Response by Parties. Any response by parties must be in writing, filed with the Court, and served upon the opposing parties within five (5) days after receipt of notice of the motion.

(D) Procedure. The judge may affirm, modify, or vacate the decision previously made, in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the Court in its discretion deems appropriate.

(E) Hearings. The Court need not hold a hearing before ruling on a motion for rehearing or new trial. Any hearing conducted shall be in accordance with the rules or disposition hearings. The Court shall state the reasoning for its decision on the motion, on the record or in writing.

(F) Stays. The Court may stay any order pending a ruling on the motion.

1-515 APPEALS.

(A) Who Can Appeal. Any party to a Children's Court proceeding may appeal a final order of the Children's Court with the Appellate Court designated by the Spirit Lake Tribe. **An order terminating or suspending parental rights is appealable by right.**

(B) Appellate Court. Follow the appeal procedure for this Court.

(C) Time for Taking Appeal. A party seeking to appeal a final Court order shall file a written notice of appeal with the Court within twenty-eight (28) days of the final order.

(D) Standard of Review. The standard of review will be further determined by the Appellate Court upon review of the final order(s) and decision(s) of the Spirit Lake Tribal Courts.

(E) Record. For purposes of appeal, a record of proceeding shall be made

available to the child, his or her parent, guardian, or Indian custodian, the child's counsel and others upon order of the Court. The party seeking the appeal shall pay the costs of obtaining such records.

(F) Stay on Appeal. The Spirit Lake Children's Court may be stayed upon the order of the Appellate Court.

(G) Conduct of Proceedings. All appeals shall be conducted in accordance with the Appellate Procedure so long as they do not directly conflict with the provisions of this Children's Code.

ARTICLE SIX – EMANCIPATION

1-601 PETITION AND SUMMONS.

(A) Any child who has attained the age of sixteen (16) years may petition the Court for a determination that he be emancipated. The petition for emancipation shall set for with specificity:

- (1) The name, sex, date and place of birth, present address and tribal affiliation of the child;
- (2) The names, date of births, addresses if known, and tribal affiliation of the child's parent or legal guardian; and
- (3) The facts upon which emancipation is sought and the basis for the Court's jurisdiction.

(B) Upon the filing of a petition for emancipation, the Court shall cause notice to be issued to the minor child and the minor child's parents or legal guardian.

1-602 HEARING.

- (A) Upon the filing of petition for emancipation, the Court shall set a time for hearing the petition that shall not be more than thirty- (30) days after the filing of the petition.
- (B) The Court shall notify the child, the child's parent or legal guardian, or any other person whom the Court deems appropriate. The notice shall state that the child is seeking emancipation and has the right to be represented by counsel.
- (C) Notice of the hearing and a copy of the petition certified by the petition or his attorney or the Court clerk, shall be personal serviced upon the persons enumerated in Subsection 1-602(B), at least ten-(10) days before the date of the hearing.
- (D) If personal service cannot be reasonably provided or the address of the person is unknown, a Judge or Court Clerk shall order notice to be given by registered or certified mail, return receipted requested, and if no such address is known then notice in a newspaper of general circulation in the community where the Court is located.

1-603 CONDUCT OF HEARING; INVESTIGATION AND REPORT.

- (A) The Court shall make written findings when determining whether the emancipation would be in the best interests of the child. The Court thereafter may enter an order declaring the child emancipated if the Court finds that:
- (1) Emancipation is in the best interests of the child;
 - (2) The child has entered into a valid marriage or is on active duty with the armed forces of the United States of America; or
 - (3) The child willingly lives separately from her parent or legal guardian, with or without their consent, and the child is managing is own financial affairs responsibly.
- (B) An order that a child is emancipated shall have the following effects:

- (1) The child shall be free of control and custody of her parent or legal guardian;
- (2) The child may consent to any medical, dental, or psychiatric care without parental consent, knowledge, or liability;
- (3) The child shall be entitled to her own earnings and to establish his or her own residence;
- (4) The child may enter into a binding contract, buy and sell real and personal property, execute releases, sue and be sued in his or her name;
- (5) The child is deemed eligible to secure a marriage license, register a motor vehicle, and enlist in the armed services of the United States;
- (6) The child may not thereafter be the subject of a petition of a child in need of protection or services;
- (7) The parent or legal guardian of the child shall no longer be the guardians of the child and shall be relieved of any obligations with regards to school attendance and financial support; and
- (8) The child shall be emancipated for the purposes of parental liability for the child's acts.

(C) An Order that a child is emancipated shall not change the minor child's eligibility for Tribal housing, incentive benefits, or other Tribal benefits as determined by governing Tribal law or policy.

ARTICLE SEVEN: SEVERANCE

1-701 Severance. In the event that any section under this Code is held to be invalid for any reasons, the remaining sections shall remain in full force and effect.