# CHAPTER 51 – CHILD CUSTODY AND PLACEMENT


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## 51.1 SECTION 1 - AUTHORITY AND PURPOSE

51.1.1 This code is enacted by the Red Cliff Tribal council pursuant to the Red Cliff Constitution, Article VI, Section l(p).

51.1.2 The purpose of this code is to establish procedures for Child Custody and Placement determinations.

51.1.3 The Red Cliff Child Support Agency shall have the authority to enforce child support obligations, including requirements that tribal employers comply with income withholding, and shall administer the Tribal IV-D plan.

## 51.2 DEFINITIONS

51.2.1 The following terms as used in this chapter shall mean:

(a) "Legal Custody" means the right and responsibility to make major decisions concerning the child, except with respect to specified decisions as set forth by the Court or the parties.

(b) "Joint Legal Custody" means the condition under which both parties share legal custody and neither party's legal custody rights are superior, except with respect to specified decisions as set forth by the Court or the parties.

(c) "Major Decisions" include, but are not limited to, decisions regarding consent to marry, consent to enter military service, consent to obtain a motor vehicle operator's license, authorization for health care and choice of school and religion.

(d) "Physical Placement" means the condition under which a party has the right to have a child physically placed with that party and has the right and responsibility to make, during that placement, routine daily decisions regarding the child's care, consistent with major decisions made by a person having legal custody. The word "placement" may be used in lieu of "physical placement".

(e) "Custody Proceeding" means proceedings in which a custody determination is the issue.

(f) "Custody Determination" means a court decision and court orders providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.

(g) "Custody Decree" means a custody determination contained in a judicial

decree made in a custody proceeding, and includes an initial decree and a modification decree.

(h) "Initial Decree" means the first custody decree concerning a particular child.

(i) "Modification Decree" means a custody decree, which modifies or replaces a prior decree, whether made by the court that rendered the prior decree or by another court.

(j) "Child" shall include both natural and adopted children.

(k) "Tribal Child" an enrolled member of the Red Cliff Band of Lake Superior Chippewa Indians, or a child who is eligible for enrollment, who is up to and including eighteen (18) years of age.

(1) "Guardian Ad Litem" means an adult appointed by the Court to represent the best interests of a minor in any proceeding to which s/he may be a party.

(m) "Service Member" means a member of the National Guard or of a reserve unit of the U.S. armed forces including active service members.

(n) "Interested Party" means a Grandparent, Great Grandparent, Adult Sibling, Aunt, Uncle or a person having legal right over the child.

(o) "The Agency" means the Red Cliff Child Support Services Agency.

(p) "Non-cash payments" means support provided to a family in the nature of goods and/or services, rather than in cash, but which, nonetheless, has a certain and specific dollar value.

(q) "Obligor" means the individual who owes a duty to make child support payments under a court order.

(r) "Obligee" means the individual to whom a duty of support is owed or the individuals legal representative.

(s) "Secretary" means the Secretary of the United States Department of Health and Human Services or designee.

(t) "Income" shall mean gross annual income from all sources including non-taxable sources except TANF, General Assistance, SSI, and other Child Support Payments. When determining monthly income annual income shall be divided by 12. Income may by imputed based upon cash deposits, purchases, and monthly expenses.

(u) "Parent" means the lawful father or mother of someone. In ordinary usage, the term denotes more than responsibility for conception and birth. The term includes (1) either the natural father or the natural mother of a child, (2) either the adoptive father or the adoptive mother of a child, (3) a child's putative blood parent until such time as paternity has been resolved, and (4) an individual whose status as guardian has been established by judicial decree.

51.3 **JURISDICTION**

51.3.1 The Tribal Court has jurisdiction to make a child custody or child support determination by initial or modification decree if:

(a) The child is an enrolled member of, or eligible for enrollment in, the Red Cliff Band of Lake Superior Chippewa Indians; or

(b) One or both of the child's parents are enrolled members of the Red Cliff Band of Lake Superior Chippewa Indians; or

(c) The child is domiciled on the Red Cliff Reservation or in Bayfield County Wisconsin and either:

(i) The child, or one or both parents are Indian, or

(ii) All parties consent to the jurisdiction of the Red Cliff Tribal Court.

51.3.2 Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his or her custody.

51.3.3 If the Tribal Court has jurisdiction to make an initial or modification decree, it may decline to exercise its jurisdiction any time before making the decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another jurisdiction is a more appropriate forum.

51.3.4 A finding of inconvenient forum may be made upon the Court's own motion or upon motion of a party or a Guardian ad Litem or other representative of the child.

51.3.5 Before determining whether to decline or retain jurisdiction the Court may communicate with a court of another tribe or state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the most appropriate court and that a forum will be available.

51.3.6 Any party may be represented by counsel of his or her own choosing, provided that the Tribe or Court shall not be required to provide counsel for any party.

51.4 **COURT FEES AND COSTS**

51.4.1 A non-refundable filing fee set by the Court shall be paid to the Tribal Court upon filing any action or petition under this Chapter.

51.4.2 No application fee may be charged to an individual who receives services under titles IV-A, IV-E foster care maintenance assistance, or XIX (Medicaid) of the Social Security Act.

## 51.5 GUARDIAN AD LITEM FOR MINOR CHILDREN

51.5.1 The court shall appoint a guardian ad litem for a minor child in any custody action if any of the following conditions exist:

(a) The court has reason for concern as to the welfare of a minor child.

(b) The custody action is contested.

51.5.2 The guardian ad litem shall be an advocate for the best interests of a minor child as to legal custody, physical placement, and visitation. The guardian ad litem shall function independently and shall consider, but shall not be bound by, the wishes of the minor child or the positions of others as to the best interests of the minor child.

51.5.3 The guardian ad litem shall be compensated at a rate that the court determines is reasonable. The court shall order either or both parties to pay all or any part of the compensation of the guardian ad litem.

## 51.6 PATERNITY

51.6.1 An action may be brought under this section to determine the paternity of any child up to and including 18 years of age.

51.6.2 A judgment of any Court establishing the identity of the father of the child shall be conclusive of the fact in all subsequent determinations of inheritance.

51.6.3 The court shall provide an alleged father the opportunity to voluntarily acknowledge paternity either in writing or orally before the Court.

(a) A document completed in any state or other tribal jurisdiction which voluntarily acknowledges paternity under the laws of that jurisdiction shall be given full faith and credit under this section as a voluntary acknowledgement of paternity.

51.6.4 If the paternity of a child is contested, the Tribal Court may order the child, mother, and any putative father to submit to genetic testing to determine actual paternity provided that:

(a) The party alleging paternity submits a sworn statement that sets forth facts establishing a reasonable possibility of the requisite sexual contact between parties; or

(b) The party denying paternity submits a sworn statement that sets forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

51.6.5 The following persons may bring an action to determine paternity of a child.

(a) The child.

(b) The child's natural mother.

(c) A man alleged to be or alleging himself to be the father.

(d) The personal representative of any of the persons listed above if that person is deceased.

(e) The child's guardian or custodian, whether so appointed by the court or not.

(f) The Tribe or any state agency in a situation where the child has received public benefits for which the father would be liable.

(g) A guardian ad litem of the child appointed for any purpose in which the determination of paternity is in the best interests of the child.

(h) Any person who may be liable for the support and maintenance of the child.

51.6.6 Any action filed under this section shall proceed pursuant to Chapter 4 Tribal Court and shall be captioned, "In regards to the paternity of [name of child]" and shall name the mother and the alleged father as parties. The Court may in its discretion appoint a guardian ad litem for a child or a minor parent in any paternity proceeding.

51.6.7 The Court shall order either or both parties to an action for paternity to pay fees and costs associated with genetic testing.

51.6.8 If both parties are unable to afford the costs associated with genetic testing the Court may order a separate judgment for the amount of reimbursement of costs associated with genetic testing to either or both parties to an action for paternity.

51.6.9 The determination of paternity may be challenged by the alleged father upon submission of a petition to the Court stating the reasons why paternity is

challenged.

51.6.10 The Court need not attempt to establish paternity in any case involving incest or rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the Court or the Red Cliff Child Support Agency, it would not be in the best interests of the child to establish paternity.

51.6.11 When genetic testing is used to establish paternity, the Court must identify and use accredited laboratories which perform, at reasonable cost, legally and medically-acceptable genetic tests which intend to identify the father or exclude the alleged father.

51.6.12 Establishment of paternity under this section has no effect on Tribal enrollment or membership.

51.7 **CUSTODY DECREE**

51.7.1 The Red Cliff Tribal Court shall presume that joint legal custody of a minor child is in the best interest of the child.

51.7.2 Upon considering the following factors, the court may grant sole legal custody only if it finds that doing so is in the child's best interest:

(a) Both parties agree to sole legal custody with the same party; or

(b) One party is not capable of performing parental duties and responsibilities or does not wish to have an active role in raising the child; or

(c) One or more conditions exist at the time that would substantially interfere with the exercise of joint legal custody; or

(d) Evidence that either party engaged in a pattern or serious incident of abuse of the child, inter-spousal battery or domestic abuse; or

(e) The parties will not be able to cooperate in the future decision making required under an award of joint legal custody.

51.7.3 If a party is a member of the armed services, the court may not consider as a factor in determining the legal custody of a child whether the service member has been or may be called to active duty in the U.S. armed forces and consequently is, or in the near future will be or may be, absent from the service member's home.

51.7.4 If the court orders sole or joint legal custody, the court shall allocate periods of physical placement between the parties.

51.7.5 The court may give one party sole power to make specified decisions, while

both parties retain equal rights and responsibilities for other decisions.

51.7.6 In making an order of joint legal custody and periods of physical placement, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purpose of determining eligibility for aid under any financial assistance program, for taxation, or for any other purpose the court considers appropriate.

51.7.7 The court may not deny periods of physical placement for failure to meet, or grant periods of physical placement for meeting, any financial obligation to the child or other parent.

51.8 **GENERAL STANDARDS IN DETERMINING CUSTODY**

51.8.1 In making a custody determination, the court shall consider all the facts in the best interest of the child. The court shall not consider the sex, race, or citizenship status of any party as a factor. The court shall consider the following factors in making its determination:

(a) The wishes of the child's parent or parents;

(b) The wishes of the child, if the child is of sufficient age, which may be communicated by the child or through the child's guardian ad litem or other appropriate professional;

(c) The interaction and interrelationship of the child with his or her parent or parents, siblings, and any other person who may significantly affect the child's best interest;

(d) The child's adjustment to the home, school, religion and community;

(e) The mental and physical health of the parties, the minor children and other persons living in a proposed custodial household;

(f) The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party;

(g) Whether there is evidence that a party engaged in abuse of the child;

(h) Whether there is evidence of domestic battery or abuse;

(i) Such other factors as the court may determine to be relevant.

51.9 **MODIFICATION OF CUSTODY AND PLACEMENT ORDERS BY CONSENT**

51.9.1 Any person having legal custody of a tribal child may initiate a modification of legal custody or physical placement by consent, by filing with the Court a petition containing the following information:

(a) The name, birth date, enrollment status and residence of the child.

(b) The petitioner's legal relationship to the child.

(c) The name, address and relationship to the child of the person or persons to whom custody is being transferred.

(d) The name, address and relationship to the child of all other interested parties.

(e) The proposed duration of the change of custody.

(f) A consent to accept custody signed by the person or persons to whom custody is being transferred.

(h) If the child is **12 years** of age or older, the consent of the child.

51.9.2 The court shall provide a copy of the petition to the Indian Child Welfare Department, which shall conduct such investigation as it deems warranted. The Indian Child Welfare Department may intervene in the proceedings and request a hearing if in its opinion the proposed change is not in the best interests of the child or the Tribe.

51.9.3 The moving party shall send a copy of the petition by certified mail to all interested parties, or serve them in accordance with the Red Cliff Tribal Court Code and a proof of service shall be filed with the Court at least **ten (10) working days** prior to any hearing. Any interested party may request a hearing on the petition.

51.9.4 If no request for a hearing is received by the court within **five (5) working days** of the hearing, the court shall make such inquiry as it deems necessary and may order the change of custody. The change of custody may be limited in duration as deemed appropriate by the court.

51.9.5 If a hearing has been requested by any interested party or the Indian Child Welfare Department, the petition shall be treated as contested.

51.10 **PETITION IN CONTESTED MODIFICATION PROCEEDINGS**

51.10.1 A parent may initiate a custody proceeding concerning a tribal child by filing with the court a petition containing the following information:

(a) The name, birth date and residence of the child, if known;

(b) Information showing that the child is a tribal child;

(c) The petitioner's legal relationship to the child;

(d) The name and address of the person having current physical custody or placement of the child;

(e) The reasons why custody modification is being sought.

51.10.2 An interested party other than a parent, may petition for custody of a tribal child, but only if the child is not in the physical custody of one of its parents or if the petitioner alleges that neither parent is a suitable custodian. The petition shall contain the following information:

(a) The name, birth date and residence of the child, if known;

(b) Information showing that the child is a tribal child;

(c) The name and address of the person having current physical custody or placement of the child;

(d) The petitioner's relationship to the child;

(e) The reasons why custody is being sought.

51.10.3 The moving party shall have the petition served personally, by certified mail, or other means permitted by the Red Cliff Tribal Court code upon all interested parties, and a proof of service shall be filed with the Court at least **ten (10) working days** prior to any hearing.

51.10.4 The court shall provide a copy of the petition to the Indian Child Welfare Department, which shall conduct such investigation as it deems warranted. The Indian Child Welfare Department may intervene in the proceedings and request a hearing if in its opinion the proposed change is not in the best interests of the child.

51.11 **CUSTODY DECREE MODIFICATION**

51.11.1 The Court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree, that a change has occurred in the circumstances of the child or his/her custodian and that the modification is necessary to serve the best interests of the child.

51.11.2 A change in the economic circumstances or marital status of either party alone is not sufficient to meet the standards for modification.

51.12 **PROHIBITED ACTS DURING CHILD CUSTODY PROCEEDINGS**

51.12.1 In a child custody proceeding, the petitioner upon filing a petition, the joint petitioners upon filing the joint petition and the respondent upon service of the petition are prohibited from doing any of the following:

(a) Harassing, intimidating, physically abusing or imposing any restraint on the personal liberty of the other party or a minor child of either of the parties.

(b) Encumbering, concealing, damaging, destroying, transferring, or otherwise disposing of property owned by either or both of the parties, without the consent of the other party or an order of the court, except in the usual course of business or in order to pay reasonable costs and expenses of the action.

(c) Without the consent of the other party or an order of the court, establishing a residence with a minor child of the parties outside the state or more than **151 miles** from the residence of the other party within the state, removing a minor child of the parties from the state for more than **90 consecutive days,** or concealing a minor child of the parties from the other party.

51.12.2 The prohibitions under 51.12.1 shall apply until the action is dismissed, until a final judgment in the action is entered, or until the court orders otherwise.

51.12.3 A party who violates any provision of 51.13.1 may be proceeded against under Chapter 4 section 13 of the Red Cliff Code of Laws for contempt of court or any other sanctions the court may deem appropriate.

51.13 **PARENTING TIME**

51.13.1 A parent not granted custody of the child is entitled to reasonable periods of visitation/parenting time unless the court finds, after a hearing, that visitation would endanger the child's physical, mental, or emotional health.

51.13.2 The Court may modify an order granting or denying visitation/parenting time whenever modification would serve the best interests of the child but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger the child's physical, mental, or emotional health.

51.13.3 The Court may order periods of visitation to be supervised by an appropriate third party who agrees by affidavit or other supporting evidence to assume the responsibility assigned by the court and to be accountable to the court for his or her actions with respect to such responsibility.

51.13.4 A parent's failure to pay support because of the parent's inability to do so shall not be sufficient cause for denial of visitation/parenting time, unless such inability is willful.

51.13.5 Proof of unwarranted denial of or interference with duly established visitation/parenting

time may constitute contempt of court and may be cause for reversal of custody.

51.14 **MOVING THE CHILD'S RESIDENCE WITHIN OR OUTSIDE THE STATE**

51.14.1 If the court grants periods of physical placement to more than one parent, it shall order a parent with legal custody of and physical placement rights to a child to provide not less than **60 days** written notice to the other parent, with a copy to the court, of his or her intent to:

(a) Establish his or her legal residence with the child at any location outside the state.

(b) Establish his or her legal residence with the child at any location within this state that is at a distance of **151 miles** or more from the other parent.

(c) Remove the child from this state for more than **90 consecutive days**.

51.14.2 The parent shall send written notice by certified mail. The notice shall state the parent's proposed action, including the specific date and location of the move or specific beginning and ending dates and location of the removal, and that the other parent may object within **30 days** after receiving the notice.

51.14.3 Within **30 days** after receiving the notice, the other parent must send to the parent proposing the move or removal, with a copy to the court, a written notice of objection to the proposed action.

51.14.4 If the parent who is proposing the move or removal receives a notice of objection within **30 days** after sending a notice, the parent may not move with or remove the child pending resolution of the dispute, or final order of the court

51.14.5 Upon receipt of a copy of written notice of intent to move or remove a child or notice of objection to the proposed action, the court shall schedule a hearing to determine if a modification of the legal custody or physical placement order is in the best interest of the child.

51.14.6 The court may modify the legal custody or physical placement order upon consideration of the following factors:

(a) The modification is in the best interest of the child.

(b) The move or removal will result in a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

(c) Whether the purpose of the proposed move or removal is reasonable.

(d) The nature and extent of the child's relationship with the other parent and the disruption to that relationship which the proposed move or removal may cause.

(e) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent

(f) The court may consider the child's adjustment to the home, school, religion and community.

51.14.7 The court may not use the availability of electronic communication as a factor in support of a modification of a legal custody or physical placement order or in support of a refusal to prohibit a move.

51.14.8 The provisions of section 51.10.2 shall also apply in modifying a legal custody or physical placement order.

## 51.15 ENFORCEMENT OF CUSTODY AND PHYSICAL PLACEMENT ORDERS

51.15.1 A parent who has been awarded periods of physical placement may file a motion if any of the following applies:

(a) The parent has had **one (1)** or more periods of physical placement denied by the other parent; or

(b) The parent has had **one (1)** or more periods of physical placement substantially interfered with by the other parent; or

(c) The parent has incurred a financial loss or expenses as a result of the other parent's intentional failure to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement.

51.15.2 The motion shall allege facts sufficient to show the following:

(a) The name of the moving party and that the moving party has been awarded periods of physical placement.

(b) The name of the responding party.

(c) That one or more of the criteria in 51.15.1 apply.

51.15.3 Upon the filing of a motion, the moving party shall serve a copy of the motion upon the responding party by personal service, certified mail, or any other means permissible under the Red Cliff Tribal Court Code. The responding party may respond to the motion either in writing before the hearing or orally at the hearing.

51.15.4 The court shall hold a hearing on the motion no later than **30 days** after the motion has been served unless the time is extended by mutual agreement of the parties and with the approval of the court.

51.15.5 If at the conclusion of the hearing the court finds that the responding party has intentionally and unreasonably denied or interfered with one or more of the moving party's periods of physical placement, the court may order one or more of the following:

(a) Issue and order granting additional periods of physical placement to replace those denied or interfered with.

(b) Award the moving party a reasonable amount of the cost of maintaining an action under this section and for attorney fees.

(c) If the underlying order or judgment relating to periods of physical placement does not provide for specific times for the exercise of periods of physical placement, issue an order specifying the times for the exercise of periods of physical placement.

(d) Find the responding party in contempt of court pursuant to Chapter 4 section 13 of the Red Cliff Code of Laws or any other sanctions the court may deem appropriate.

51.16 **CHILD SUPPORT**

51.16.1 In a child custody proceeding, the Court may order either or both parents owing a duty of support to a child, to pay an amount reasonable and necessary for support upon considering all relevant factors, including:

(a) The financial resources and needs of the child.

(b) The financial resources and needs of the custodial parent.

(c) The physical and emotional condition of the child.

(d) The child's educational needs.

(e) The financial resources and needs of the non-custodial parent.

(f) The tax consequences of such payments to each parent.

(g) The cost of childcare if the custodial parent works outside the home.

(h) The award of substantial periods of physical placement to both parents.

(i) Extraordinary travel expenses incurred in exercising the right to periods of physical placement.

51.16.2 Non-cash payments shall be permitted to satisfy all or part of support obligations if the parties and Agency agree to allow non-cash payments in cases not covered by federal Title IV-D restrictions. Tribal support orders allowing non-cash payments shall:

(a) State the specific dollar amount of the support obligation; and

(b) State the maximum dollar amount of non-cash payment that the custodial parent will accept.

(c) Describe the type(s) of non-cash payment that is permitted.

(d) Provide that non-cash payment cannot be used to satisfy assigned child support obligations

51.16.3 When both parents agree that non-cash payments may be used to satisfy a child support obligation, the non-cash payment may include, but is not limited to the following:

(a) Clothing.
(b) Groceries.
(c) Deer/Venison.
(d) Wood.
(e) Transportation.
(f) Skilled trades or services, such as car repairs, lawn care and snow removal.

51.16.4 Any court-ordered obligation or condition of child support may be reasonably modified to adjust to changes in relevant factors, including those listed in 51.17, by filing with the court a petition containing the following information:

(a) The name, birth date, and residence of the child.

(b) Information showing the child's tribal enrollment or eligibility for enrollment.

(c) The petitioner's legal relationship to the child.

(d) The relevant factors to be considered by the court in determining whether modification is necessary.

(e) The proposed duration of the modification of the child support obligation or condition, if the changes in relevant factors are temporary.

51.16.5 Any Court ordered modification of a child support obligation or condition may be challenged by filing with the court a petition stating the following:

(a) The name, birth date, and residence of the child.

(b) Information showing the child's tribal enrollment or eligibility for enrollment.

(c) The petitioner's legal relationship to the child.

(d) The relevant factors to be considered by the court in determining why the modification is not necessary.

51.16.6 In every case, and at each request for modification the Court shall:

(a) Create a written order for each payor that memorializes their duty to pay a specific dollar amount each week based upon the factors in 51.16.1; or

(b) Order the Child Support to calculate support based upon guidelines created by the Child Support Agency. Once the Child Support Agency calculates support the Court shall then issue an amended order reflecting the weekly amount under the guidelines.

51.16.7 In any proceeding for the award of child support, there shall be:

(a) A rebuttable presumption that the amount of the award that would result from the application of the guidelines established consistent with this section is the correct amount of child support to be awarded; and

(b) An application of the child support guidelines created by the Red Cliff Child Support Agency, unless there is a written finding or a specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case in accordance with criteria established by the Court. Such criteria must take into consideration the needs of the child. Findings that rebut the guidelines must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines. These guidelines shall at a minimum:

(1) Take into account the needs of the child and the earnings and income of the noncustodial parent; and

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

51.16.8 Any order for child support shall also specifically set forth each parent's responsibility for providing health insurance if available to the minor child and for the payment of the minor child's health expenses uncovered by insurance.

51.16.9 ***Unemployed teenage parent.*** In 51.16.10, an "unemployed teenage parent" means a parent who is less than **20 years** of age and satisfies all of the following criteria:

(a) Is unemployed.

(b) Is financially unable to pay child support.

(c) Would be ordered to make payments for the support of a child but for the factors in 51.16.11.

51.16.10 In an action for an order providing for child support under 51.16.1 or modification of a child support obligation under 51.16.6 the court shall order an unemployed teenage parent to do one or more of the following:

(a) Register for work at a public employment office.

(b) Apply for jobs.

(c) Participate in a job training program.

(d) Pursue or continue to pursue an accredited course of instruction leading to the acquisition of a high school diploma or its equivalent if the unemployed teenage parent has not completed a recognized high school course of study or its equivalent, except that the Court may not order the unemployed teenage parent to pursue instruction if the instruction requires the expenditure of funds by the unemployed teenage parent other than normal transportation and personal expenses.

51.16.11 Child support orders are enforceable up to the child's eighteenth (18th) birthday generally, but if a child if a child continues to be enrolled in high school or an equivalency program orders shall continue until the child's nineteenth (19th) birthday.

51.16.12 ***Child Support Guidelines.*** The Red Cliff Child Support Agency shall create guidelines for the calculation of child support amounts consistent with this code. Such guidelines shall at a minimum:

(a) Take into account the needs of the child and the earnings and income of the noncustodial parent; and

(b) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

51.16.13 When appropriate, these child support guidelines will be reviewed and revised at least once every **four (4) years.**

51.17 **INCOME WITHHOLDING AND ENFORCEMENT**

51.17.1 Upon order of the Tribal Court, an obligor shall be subject to immediate income withholding to fulfill the obligation of the Court determined child support order.

51.17.2 In addition to fulfilling a current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.

51.17.3 If the obligor is a tribal employee, then the support will be withheld from the obligor's gross earnings pursuant to Chapter 35 of the Red Cliff Tribal Code.

51.17.4 Pursuant to the Consumer Credit Protection Act (15 USC §1673), the combined total amount of income subject to garnishment for a current month's obligation and a past obligation shall not exceed either:

(a) Where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50% of such individual's disposable earnings for that week; or

(b) Where such individual is not supporting such a spouse or dependent child described in clause (a), 60% of such individual's disposable earnings for that week.

51.17.5 The Agency shall promptly refund amounts which have been improperly withheld.

51.17.6 The Agency shall promptly terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

51.17.7 If the employer fails to withhold income in accordance with the provision of the income withholding order, the employer will be liable for the accumulated amount the employer should have withheld from the noncustodial parent's income plus costs of enforcement incurred by the Court, the Tribal Child Support Agency and the receiving parent.

51.17.8 Income withholding shall not occur in any case where:

(a) Either the custodial or noncustodial parent demonstrates, and the Court enters a finding, that there is good cause not to require income withholding; or

(b)(1) A signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative arrangement, and is reviewed and entered into the record by the Court, and

(2) Withholding is not required by other law including but not limited to the

Social Security Act, TANF regulations, or Medicaid.

51.17.9 Where immediate income withholding is not in place, if the non-custodial parent fails to make payments under a Tribal support order for more than **30 days** the Court shall order income withholding effective immediately.

51.17.10 The only basis for contesting a withholding is a mistake of fact, which for purposes of this paragraph, means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent. If a mistake of fact exists, the obligor has the right to challenge the income withholding by petition to the Agency.

51.17.11 The employer is subject to a fine to be determined under Tribal law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.

51.17.12 To initiate income withholding, the Agency shall send a notice using the standard Federal income withholding form.

51.17.13 The Agency shall allocate withheld amounts across multiple withholding orders to ensure that in no case shall allocation result in a withholding for one of the support obligations not being implemented.

51.17.14 The Agency shall be responsible for receiving and processing income withholding orders from States, Tribes, and other entities, and ensuring orders are properly and promptly served on employers within the Tribe's jurisdiction.

51.17.15 In the event that an obligor is at least one month delinquent in paying his or her child support obligation, he or she may be subject to the following enforcement actions by the Agency:

(a) increase in amount of wages withheld

(b) placement on lien docket

(c) credit bureau reporting

(d) intercept of income and/or other payments

(e) seizure of personal property

(f) suspension of licenses

(g) charge of contempt

(h) referral for criminal charges

(i) any other enforcement action included in this law or in a rule that is established under this law including administrative enforcement mechanisms.

## 51.18 DISTRIBUTION OF CHILD SUPPORT

51.18.1 The Red Cliff Child Support Agency shall in a timely manner:

(a) Apply collections first to satisfy current support obligations, except as provided in 51.18.5 of this section; and

(b) Pay all support collections to the family unless the family is currently receiving or formerly received assistance from the Tribal TANF program and there is an assignment of support rights to the Tribe's TANF agency, or the Agency has received a request for assistance in collection support on behalf of the family from a State or Tribal IV-D agency.

51.18.2 ***Current Receipt of Tribal TANF:*** If the family is currently receiving assistance from the Tribal TANF program and has assigned support rights to the Tribe; and

(a) There is no request for assistance in collecting support on behalf of the family from a State or Tribal IV-D, the Agency may retain collections on behalf of the family, not to exceed the total amount of Tribal TANF paid to the family. Any remaining collections must be paid to the family.

(b) There is a request for assistance in collecting support on behalf of the family from a State or Tribal IV-D, the Agency may retain collections, not to exceed the total amount of Tribal TANF paid to the family. Except as provided in 51.18.6 of this section, the Red Cliff Child Support Agency must send any remaining collections, as appropriate, to the requesting State IV-D agency for distribution under section 457 of the Social Security Act (42 USC § 657) and 45 CFR 302.51 or 302.52, or to the requesting Tribal IV-D agency for distribution in accordance with this section.

51.18.3 ***Former Receipt of Tribal TANF:*** If the family formerly received assistance from the Tribal TANF program and there is an assignment of support rights to the Tribe; and

(a) There is no request for assistance in collecting support from a State or Tribal IV-D agency, the Agency must pay current support and any arrearages owed to the family to the family and may then retain any excess collections, not to exceed the total amount of Tribal TANF paid to the family. Any remaining collections must be paid to the family.

(b) There is a request for assistance in collection support from a State or

Tribal IV-D. the Agency must send all support collected, as appropriate, to the requesting State IV-D agency for distribution under 457 of the Social Security Act (42 USC § 657) and 45 CFR 302.51 or 302.52, or to the requesting Tribal IV-D agency for distribution under this section, except as provided in 51.18.6 of this section.

51.18.4 ***Requests for Assistance from State or Tribal IV-D Agency:*** If there is no assignment of support rights to the Tribe as a condition of receipt of Tribal TANF and the Agency has received a request for assistance in collecting support on behalf of the family from a State or another Tribal IV-D agency the Agency must send all support collected to either the State IV-D agency for distribution in accordance with section 457 of the Social Security Act (42 USC § 657) and 45 CFR 302.51 or 302.52, or to the Tribal IV-D agency for distribution under this section , as appropriate, except as provided 51.18.6.

51.18.5 ***Federal Income Tax Refund Offset Collections:*** Any collections received based on Federal income tax refund offset under section 464 of the Social Security Act (42 U.S.C. §664) and distributed by the Agency must be applied to satisfy child support arrearages.

51.18.6 ***Option to Contact Requesting Agency for Appropriate Distribution:*** Rather than send collections to a State or another Tribal IV-D agency for distribution as required under § 309.115 (b)(2), (c)(2), and (d), the Agency may contact the requesting Slate IV-D agency to determine appropriate distribution under this section, and distribute collections as directed by the other agency.

51.19 **LOCATING CUSTODIAL OR NON-CUSTODIAL PARENTS**

51.19.1 The Red Cliff Child Support Agency shall attempt to locate custodial or noncustodial parents, sources of incomes, and assets when location is required to take necessary action in a case.

51.19.2 The Agency shall use all sources of information and records reasonably available to the Tribe to locate custodial or noncustodial parents and their sources of income and assets.

51.20 **RECORD KEEPING**

51.20.1 The Red Cliff Child Support Agency shall retain the following records necessary for the proper and efficient operation of the program for at least three years:

(a) Applications for child support services;

(b) Efforts to locate noncustodial parents;

(c) Actions taken to establish paternity and obtain and enforce support;

(d) Amounts owed, arrearages, amounts and sources of support collections, and the distribution of such collections;

(e) Red Cliff Child Support Agency expenditures;

(f) Any fees charged and collected, if applicable;

(g) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary; and

51.20.2 In addition to 51.17, the Agency shall comply with the retention and access requirements of 45 CFR 74.53.

51.21 **USE AND DISCLOSURE OF PERSONAL INFORMATION**

51.21.1 The use or disclosure of personal information received by or maintained by the Red Cliff Child Support Agency shall be limited to purposes directly connected with the administration of the Agency, or titles IV-A and XIX with the administration of other programs or purposes prescribed by the Secretary in regulations.

51.21.2 All confidential information handled by the Agency shall be handled in confidence and not disclosed unless by court order.

51.21.3 The Agency shall not disclose information relating to:

(a) The proceedings or actions to establish paternity, or to establish, modify, or enforce support;

(b) The whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered;

(c) The whereabouts of one party or the child to another person if the Tribe has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or child.

51.21.4 The Agency shall adopt additional specific safeguarding regulations that are applicable to Tribal IV-D programs when promulgated by the Secretary.

51.21.5 The Agency shall determine and impose sanctions for the unauthorized use or disclosure of information covered in this section.

51.22 **INTERGOVERNMENTAL CASE PROCESSING**

51.22.1 The Red Cliff Child Support Agency shall extend the full range of services available under its IV-D plan to respond to requests from, and cooperate with, State and other Tribal IV-D agencies.

51.22.2 The Agency shall recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B.

51.22.3 The Agency shall not charge an application fee in any intergovernmental case referred to the Agency.

(a) Red Cliff Child Support Agency expenditures.

(b) Any fees charged and collected, if applicable.

(c) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary.

51.23 **EFFECTIVE DATE**

51.23.1 This ordinance shall become effective within **60 days** after the Red Cliff Tribal Child Support Agency is granted a comprehensive grant from the Social Security Administration.