

# **QAGAN TAYAGUNGIN CHILDREN’S CODE**

## **CHAPTER 1**

### **GENERAL PROVISIONS FOR THIS CHILDREN’S CODE**

<b>Section 1. Findings and Purpose.....</b>	<b>2</b>
<b>Section 2. Authority and Jurisdiction .....</b>	<b>3</b>
<b>Section 3. Best Interest of the Child.....</b>	<b>4</b>
<b>Section 4. Child Placement Preferences .....</b>	<b>6</b>
<b>Section 5. Definitions .....</b>	<b>6</b>
<b>Section 6. Special Instructions to Court .....</b>	<b>11</b>
<b>Section 7. Cooperation with Other Agencies .....</b>	<b>11</b>
<b>Section 8. Tribal Policies and Procedures Regarding Indian Child Welfare Act .....</b>	<b>12</b>

#### **Section 1. Findings and Purpose**

- A. The children within the jurisdiction of the Qagan Tayagungin Tribe of Sand Point (the “Tribe”) are the Tribe’s most valuable resource, and their welfare is of paramount importance to the Tribe.
  
- B. The Qagan Tayagungin Tribe is in the best position to protect Tribal children, to strengthen our family ties, to maintain and preserve our cultural heritage, and to ensure the future of the Tribe.
  
- C. The children within the jurisdiction of the Tribe must receive the care and guidance necessary to enable them to become productive members of their Tribe and society in general.

D. This Code is enacted for the following purposes:

1. To allow the Tribe to take an active role in providing for the welfare of the children within its jurisdiction;
2. To preserve and strengthen family ties whenever possible, including improvement of home and environment;
3. To protect and preserve tribal heritage and cultural identity of the children within the Tribe's jurisdiction; and
4. To ensure that other courts and agencies will fully cooperate with the Tribe in fulfilling the purposes of this code.

## **Section 2. Authority and Jurisdiction**

A. General Jurisdiction. The Qagan Tayagungin Tribal Government regulates domestic relations matters under the authority of its inherent sovereign powers as a federally recognized Indian tribe, under any additional new powers so delegated by Congress, under unwritten tribal law, under the Constitution of the Qagan Tayagungin Tribe, and under written tribal ordinances. The Qagan Tayagungin Tribal Court shall have the authority to make decisions about child custody, adoption, and child protection when the children are members or are eligible for membership in the Qagan Tayagungin Tribe; when one or more of the parties in a case are members or are eligible for membership in the Qagan Tayagungin Tribe; or when the health, safety, or welfare of the tribal members or other residents is affected. Territorial jurisdiction shall not be a factor in establishing jurisdiction under this Code.

B. Exclusive jurisdiction cases. Once the Tribe exercises its jurisdiction in a child welfare case, the Tribe acquires exclusive jurisdiction over all aspects of the case as a matter of tribal law. Upon filing of a complaint or petition under this Code or transfer of a child custody proceeding to this Court, the child who is the subject of the proceeding becomes a ward of the Tribal Court, and remains so

until the case is dismissed or concluded, or until the Tribal Court gives authority to another government or another court by Tribal Court Order.

C. Emergency jurisdiction over non-Tribal children. Where a child who is not a tribal member or eligible for membership in the tribe, is physically present in the Village of Sand Point and is faced with potential abuse or neglect and it appears that no other court is in a position to intervene within the necessary time frame, the Tribal Court may exercise temporary emergency jurisdiction as necessary to protect the child. Such jurisdiction will not be exclusive and will protect the child only for such time as is necessary for the matter to be brought to the attention of a court that has full jurisdiction over the child.

D. Concurrent jurisdiction cases. If the child is a member of or eligible for membership in more than one tribe, the Qagan Tayagungin Tribal Court shall make efforts to communicate with the other tribe or tribes so that, if that tribe is also going to assert jurisdiction, a cooperative jurisdictional arrangement can be explored. If information is provided to the court to the effect that a state court case was already pending in state court at the time the Tribal Court case was filed, the Tribal Court shall make efforts to communicate with the state court to work out any jurisdictional issues.

E. Jurisdiction not based on territory. The Qagan Tayagungin Tribal Court has the authority to hear and decide children's cases involving tribal members or children eligible for tribal membership even if the children do not live within the Village.

### **Section 3. Best Interest of the Child**

A. Standard of decision. In all cases involving children, the Qagan Tayagungin Tribal Court shall hear all the facts, witnesses, and evidence brought before it and shall consider the rights of all parties in the case; however, the rights and best interests of the child shall be more important than the rights of any other person or entity. In any case brought under this Code in Tribal Court, the State law practice of giving automatic preference to the rights of the natural parents over all others, regardless of circumstances, will not be followed.

B. Factors for consideration. In determining what is in the best interest of the child, the Court shall consider the following factors:

1. The child's wishes if he or she is old enough and understands what the proceedings mean;
2. The love and affection existing between the involved adults and the child;
3. Which placement will best allow the child to receive the care and guidance necessary to enable the child to become a productive member of the Tribe and society in general;
4. The needs of the child, including educational needs, physical and medical needs, emotional needs, mental needs, and religious needs;
5. Other special needs unique to the child that may be better met in one placement than another;
6. Which placement will best foster an awareness of the child's cultural heritage and identity;
7. The stability of the home environment likely to be offered by the involved adults;
8. The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
9. Whether the involved adults are likely to encourage a loving relationship between the child and the other persons with whom the child has emotional ties;
10. Any evidence of violence (determined by a criminal background check and/or by testimony of reliable sources), domestic violence, child abuse or child neglect in the involved adults' household(s);
11. Any evidence of substance abuse by the involved adults or someone living with them that would or does directly affect the emotional or physical well being of the child;

12. The locations of persons to whom the child has emotional ties, whether the child is enrolled in school near one of those persons and the desirability of the child remaining at that school;
13. The advantages of keeping the child in the community where the child resides;
14. Other considerations the Court feels are relevant to the best interest of the child.

#### **Section 4. Child Placement Preferences**

The following placement preferences shall be applied in all cases involving children, unless the Court finds that it would be in the child's best interest to vary the order of preference or place the child not according to these preferences:

1. Permit the child to remain with his parent or custodian subject to any conditions or limitations the Court may prescribe.
2. Place the child with a member of the child's extended family who resides closest to or in the city or village in which the child resides, subject to any conditions or limitations the Court may prescribe.
3. Place the child with a member of the child's extended family who resides elsewhere, subject to any conditions or limitations the Court may prescribe.
4. Place the child with a member of the Qagan Tayagungin Tribe in a foster home licensed, approved or specified by the Qagan Tayagungin Tribe, subject to any conditions or limitations the Court may prescribe.
5. Place the child in a foster home that is licensed, approved or specified by the Qagan Tayagungin Tribe, subject to any conditions or limitations the Court may prescribe.
6. Place the child with a member of another tribe with whom the child is culturally related, subject to any conditions or limitations the Court may prescribe.
7. Place the child in a foster home that is licensed by another tribe or a state, subject to any conditions or limitations the court may prescribe.

## **Section 5. Definitions**

The following words and phrases, whenever used in this Code, shall have the following meanings:

**"Adoptive placement"** means the permanent placement of a child for adoption.

**"Adult"** means a person who is eighteen 18 years of age or older.

**"Adjudication Hearing"** means the trial phase of a child in need of care proceeding at which time all parties to the case present their testimony and evidence to the Court, and the Court decides whether a child should be ordered to be a child in need of care and taken into custody.

**"Beyond a Reasonable Doubt"** shall mean the degree of certainty which must exist in the minds of the judges hearing a case before any parental rights to a child may be terminated under Chapter 4, Section 2 of this Code. This standard of proof does not require that the evidence be so clear that no possibility of error exists, but rather, it simply means that the evidence must be so conclusive and complete that as reasonable persons, there is no "reasonable doubt" in the decision-makers' mind that parental rights should be terminated.

**"Child"** means a person who is under eighteen years of age.

**"Child protection proceeding"** means a case where a child is found to be a "child in need of aid," a foster care placement case, a termination of parental rights case, a preadoptive or adoptive placement case, or an adoption case that is contested by a parent, custodian or guardian.

**"Clear and Convincing Evidence"** shall mean the degree of certainty which must exist in the minds of judges hearing a case before any child

may be placed in foster care for other than emergency purposes. As a standard of proof, it requires evidence that is less than that required by the 'beyond a reasonable doubt' standard (which is used in termination proceedings), but greater than that required by the 'probable cause' standard (which is used in emergency temporary custody orders).

**"Council"** shall mean the Qagan Tayagungin Tribal Council

**"Corporal Punishment"** means the infliction of excessive bodily pain as a penalty for disapproved behavior. It includes actions such as shaking, spanking, delivering a blow with a part of the body or an object, slapping, punching, pulling or action that seeks to induce pain.

**"Custodian"** means a person who has been given responsibility to care for a child either by a parent, or under tribal custom, court order, tribal law or State law.

**"Dispositional Hearing"** means that phase of the child in need of aid proceeding at which time the Court shall make a final decision (or "disposition") regarding placement of a child who has been judged (or "adjudicated") to be a child in need of aid, and what the rights, duties and obligations of all parties will be regarding the child.

**"Domestic violence"** Domestic violence means assault, threats of violence, or physical, sexual, or mental abuse of a person when the victim is a spouse, a former spouse, an extended family member, a boyfriend or girlfriend, or any other person who has been an intimate partner, or a member of the social unit made up of those living together in the same dwelling as the victim or perpetrator.

**"Extended family"** means the person's parents, children, grandparents, great-grandparents, great-aunts, great-uncles, aunts, uncles, cousins,

sisters, and brothers, or someone who is considered to be extended family under the traditional laws of the Qagan Tayagungin Tribe.

**"Foster care placement"** means any action removing a child from his/her parent or custodian for temporary placement in a foster home, a relative's home, an institution or the home of a guardian where the parent or custodian cannot have the child returned on demand.

**"Foster home"** means a home certified or licensed to provide foster care by the Qagan Tayagungin Tribe or another federally recognized tribe or a state licensed home.

**"Guardian"** means a person who is not a parent and is appointed by a tribal or state court to have legal custody of a child. A "Guardian" is not the same thing as a "Guardian ad litem."

**"Guardian *ad Litem*"** ("GAL") means a person appointed by the Qagan Tayagungin Tribal Court to look after the best interest of any child involved in a case under this Code. The guardian *ad litem* shall be a full party in all cases. The guardian *ad litem's* job is to investigate facts in the case and advise the Court what actions the Court should take that would be in the child's best interest. The Court may adopt the advice of the GAL in whole or in part, or for good cause, may act or order action that is different than the advice of the GAL.

**"Involved agency"** means an agency that is a party to the case due to the request of the Tribe or because of the jurisdiction of another government over the case. Examples of this might be the State of Alaska OCS or the social services department of another tribe or county in another state.



**"Parent"** means the biological parent of a child or any person who has lawfully adopted a child, whether in State or Tribal Court, or under tribal custom. It shall not mean the unwed father where the father has not admitted or acknowledged in writing or otherwise that he is the father, or where a Court Order establishing paternity has not been entered (i.e. "paternity" has not been established). It shall not mean any person as to whom the parent-child relationship has been lawfully terminated.

**"Parties"** means Petitioner(s) and Respondent(s) listed in the Petition to use the Tribal Court, the guardian ad litem and any other person or entity who is given the right by the Tribal Court to express and protect their interests in a case.

**"Preadoptive placement"** means the temporary placement of a child in a foster home or institution after the termination of parental rights, but prior to or in place of adoptive placement.

**"Probable cause"** for the purposes of a "child protection proceeding" means the degree of certainty which must exist in the minds of Judges hearing a case before any child may be taken into emergency custody or temporary foster care. Probable cause exists if reasonably trustworthy information is presented to the Court such that the Court might reasonably believe that a child may be a child in need of care and that an investigation and hearing should be conducted to determine all of the facts. It is a standard of proof which requires less evidence than is required by the 'clear and convincing evidence' or 'beyond a reasonable doubt' standards.

**"Termination of parental rights"** means any action resulting in the termination of the parent-child relationship.

**"Ward"** means a child who has been taken into custody by the Court making the Court the child's legal guardian.

**"Warrant"** means a written order issued by the Court directing the doing of a certain act, for example, directing that a duly authorized tribal official to take a child into custody on behalf of the Court.

### **Section 6. Special Instructions to the Court**

In all cases heard under this Code, the Tribal Court shall apply the law in the following order:

1. The Indian Civil Rights Act of 1978;
2. The properly authorized and enacted codes, ordinances, court rules and regulations of the Qagan Tayagungin Tribe of Sand Point;
3. The traditional and customary law of the Qagan Tayagungin Tribe of Sand Point;
4. Such other tribal, federal, and/or state laws which the Court may determine prudent to apply.

### **Section 7. Cooperation with Other Agencies.**

It is the intention of the Tribe to cooperate to the greatest extent possible with other state, tribal, and private agencies and to coordinate efforts and utilize all available resources in a manner which is in the best interests of the native children, families, and the Tribe.

### **Section 8. Tribal Policies and Procedures Regarding the Indian Child Welfare Act.**

- A. The Council and the Court shall seek to exercise all rights and privileges recognized or granted by the Indian Child Welfare Act of 1978 ("ICWA"),

and shall make every effort to assure that the policies of the Act are recognized and applied by the Tribe and the State.

- B. Upon receipt of a Notice of Child Custody Proceeding or Adoption Petition in a state court regarding a child who is a member of the Tribe or is eligible for membership in the Tribe, the President or Chief of Council or a designee shall bring the notice to the attention of the full Council as soon as reasonably possible. This may occur by a regular or special meeting of the Council or by communication of the Notice to Council members individually.
- C. The Council shall, in a meeting or by means of a poll, the results of which shall be recorded, decide what action is appropriate in a given case. Such action may include exercising any of the rights or privileges recognized or granted under the ICWA, including intervention or a request for transfer of a case to Tribal Court. If the child's membership status is unknown, the Council may communicate this to the State court or the responsible Attorney General's office and request a delay in any hearing in order to allow the Tribe time to determine the child's membership status.
- D. If the Council chooses to intervene or request a transfer to Tribal court, it may designate in writing a representative to appear at any hearings and file any necessary documents, or it may obtain legal counsel to represent it.
- E. If the Council chooses not to intervene or transfer a case to Tribal court, it shall notify the proper court of that decision in writing, indicating that the right to intervene at a later date is reserved.
- F. The Council shall retain confidential files of all notices of child custody proceedings, petitions, Council decisions on interventions or transfer requests, or any other action taken regarding a member child involved in an ICWA case.