

# Mille Lacs Band Statutes Annotated

Amendments received through: June 5, 2009

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## TITLE 8 - CHILDREN AND FAMILIES

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### Historical and Statutory Notes

The Preamble of Band Statute 1096-MLC-28 provides:

"It is enacted, a code for protecting the general health and welfare of the people of the constituent Bands of the Mille Lacs Band of Chippewa Indians. The people of our constituent Bands represent the greatest natural resource that is available for our continued existence. In order to ensure that this resource will be available now and in the future, the government for the constituent Bands must take measures to ensure the freedom, safety, care and guidance of our people. As it is from the Great Spirit that these gifts are received by our people and we, in turn, have a cultural obligation to follow our traditional customs and beliefs in the

best interest of perpetuating our existence. We, therefore, do this so that non-Indians may cherish the members of our Band when they have cause to interact with us. Let them be morally bound."

Band Statute 1096-MLC-28, § 45 provides:

"Section 45. Severability. If any provisions of this Chapter or the application thereof to any person, business, corporation or circumstances is held invalid, the invalidity shall not affect other provisions or application of this Chapter which can be given effect without the invalid provisions or application and to this end the provisions of this Chapter are declared severable."

The title of Band Assembly Bill 06-04-01-96, enacted as Band Ordinance 01-96 (Chapter 13 of this Title), is :

"A bill of Tribal Government to provide for the amendment to Band Statute 1096-MLC-28 of the Laws of the Non-Removable Mille Lacs Band of Ojibwe Indians. To supersede any provisions of 1096-MLC-28 not consistent with this amendment."

The preamble of Band Ordinance 01-96 (Chapter 13 of this Title) provides:

"Be it enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Ojibwe Indians for the purpose of amending Band Statute 1096-MLC-28."

#### **Cross References**

Assault and battery, civil causes of action, see 24 MLBSA § 251.  
Persons capable of contracting, see 24 MLBSA § 106.

## **CHAPTER 1**

### **GENERAL PROVISIONS**

#### **Section**

1. Findings and determinations.
2. Reservation of right of amendment.
3. Definitions.
4. Jurisdiction of Court.
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8. Contracts for care and placement of minors.
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12. Adjudication upon child status not conviction of crime.
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14. Standard for shelter care and detention facilities.
15. Legal duties of Human Resource Officers and Child Social Workers.
16. Obligations of Solicitor General.
17. State of Minnesota: agreement regarding Indian child custody proceedings.

## **§ 1. Findings and determinations**

(a) The Band Assembly hereby finds that the purpose of Chapters 1 to 10 of this title is to secure for each child who may come before the Court of Central Jurisdiction such care, guidance and control preferably in his own home, as will serve his welfare and the best interests of the Bands. To preserve and strengthen the child's family ties, to preserve and strengthen the child's cultural and ethnic identity. Additionally, to secure for any child who may be removed from his home the care, guidance and control as nearly equivalent as that which he should have been given by his parents to help him develop into a responsible, well adjusted adult and to improve any conditions or home environment which may be contributing to his delinquency. To this end, Chapters 1 to 10 of this title shall be liberally construed.

(b) The Band Assembly hereby finds that there is no resource that is more vital to the continued existence and integrity of the Band than our children and our elders and all the people who comprise the Non-Removable Mille Lacs Band of Chippewa Indians.

(c) The Band Assembly hereby finds that the state of Minnesota, exercising its concurrent jurisdiction over child custody proceedings through administrative and judicial bodies, has failed to recognize the essential relations of the constituent Bands and the cultural and social standards prevailing in our communities and families.

(d) The Band Assembly hereby finds and determines that it shall be the policy of the constituent Bands to protect the best interests of all children under the jurisdiction of the Bands and to promote stability and security of the constituent Bands and the families thereof, by establishing standards for the care of our children by choosing courses of action which least restrict the child's freedom and are consistent with the safety and interests of the constituent Bands of the Mille Lacs Band of Chippewa Indians.

(e) The Band Assembly hereby finds and determines that the purposes of Chapters 1 to 10 of this title shall be fulfilled by the creation of a special division under the Court of Central Jurisdiction.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 1.

## **§ 2. Reservation of right of amendment**

The Band Assembly hereby fully reserves the right to alter, amend, or repeal the several provisions of Chapters 1 to 10 of this title, and all rights and privileges granted or extended hereunder shall be subject to such reserved rights.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 46.

## **§ 3. Definitions**

For the purpose of Chapters 1 to 10 of this title the words and phrases shall have the meanings respectively ascribed to them:

(a) "Abandon" means when a parent leaves a child without communication or fails to support a child and there is no indication of the parent's willingness to assume his parental role for a period exceeding two years.

(b) "Adult" means any person subject to the jurisdiction of the Mille Lacs Band of Chippewa Indians who is eighteen years of age or older.

(c) "Court" means the Human Resources Division of the Court of Central Jurisdiction when exercising jurisdiction under Chapters 1 to 10 of this title.

(d) "Court Magistrate-Judge" means any (duly appointed, elected) judge of the Human Resources Division of the Court of Central Jurisdiction when exercising jurisdiction under Chapters 1 to 10 of this title.

(e) "Custodian" means one who has physical custody of a minor and who is providing food, shelter and supervision to him.

(f) "Delinquent Act" means an act, which if committed by an adult, is designated a crime under the laws of the state of Minnesota or is designated a crime under the tribal law and order code or tribal ordinance.

(g) "Detention" means the placement of a minor in an appropriate physically restrictive facility.

(h) "Extended Family" means a person who has reached the age of sixteen and who is the minor's grandparent, aunt, or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or

stepparent, or made part of the extended family by tribal resolution, or as defined by the law of custom of the child's tribe.

(i) "Guardian" means a person other than the minor's parent who is by law responsible for that minor (but not the minor's property).

(j) "Guardian Ad Litem" means an adult appointed by the Court to prosecute or defend for a minor in any proceeding to which he may be a party.

(k) "Human Resource Officer" means any and all employees of the Mille Lacs Band of Chippewa Indians-Human Services Administration who are funded pursuant to any grant or contract to service any human assistance need of any person under the jurisdiction of the Band.

(l) "Indian Custodian" means an adult Band member who has reached the age of twenty-one in whom temporary physical care, custody and control has been transferred by the parent of such minor.

(m) "Juvenile Offender" means a person who commits a delinquent act prior to his eighteenth birthday.

(n) "Least Restrictive Alternative" means the terms in the code direct the Court to select the least drastic method of achieving its goal; the restrictions placed on the child must be reasonable related to the Court's objectives and must be the least restrictive way of achieving that objective. For example, the reason any person is held in detention before trial is to insure that the person will not leave the area, therefore, the only restraint on that person's freedom is the restriction on his freedom of movement. No other restriction such as mail censorship or being placed in solitary confinement is related to the stated purpose of pretrial detention.

(o) "Minor" means:

(1) A person under eighteen years of age.

(2) A person eighteen years of age or older concerning whom proceedings are commenced in the Court of Central Jurisdiction prior to his eighteenth birthday.

(3) A person eighteen years of age or older who is under the continuing jurisdiction of the Court of Central Jurisdiction.

(p) "Minor-in-need-of-care" means a minor who has no parent(s), guardian or custodian available who is capable and willing to care for him, or has

suffered, or is likely to certainly suffer a physical injury, inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions. Or, has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parent(s), guardian or custodian necessary for his health and well-being. Or, has been sexually abused, or has been committing delinquent acts as a result of parental pressure, guidance or approval.

(q) "Parent" includes a natural or adoptive parent as defined by the Court of Central Jurisdiction, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 29.

#### **Cross References**

Criminal causes of action, see 24 MLBSA § 1001 et seq.

### **§ 4. Jurisdiction of Court**

(a) The Court of Central Jurisdiction is hereby conferred exclusive and original subject matter jurisdiction over any cause of action that may arise pursuant to Chapters 3 to 10 of this title.

(b) The Court shall have exclusive and original jurisdiction of the following proceedings:

- (1) A minor is alleged to be a juvenile offender, unless the Court transfers jurisdiction to an exterior court;
- (2) A minor is alleged to be a minor-in-need-of-care;
- (3) Termination of parental rights;
- (4) Adoption of a minor;
- (5) Custody of or appointment of a custodian, conservator or a guardian for a minor;
- (6) A mentally retarded or mentally ill minor;

(7) Child custody proceedings, as defined by the Indian Child Welfare Act, (25 U.S.C.A. § 1901 et seq.) if the minor is domiciled or resides on territories under the jurisdiction of the Band and

(8) Transfer of jurisdiction from any court of child custody proceedings, as defined by the Indian Child Welfare Act, if the minor is not domiciled or does not reside on territories under the jurisdiction of the Band.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, §§ 2, 3.

### **§ 5. Transfer of jurisdiction**

(a) In any child custody transfer from any court, the Band has exclusive jurisdiction over child custody proceedings, as defined by the Indian Child Welfare Act, (25 U.S.C.A. § 1901 et seq.) If the minor is domiciled or resides on lands under the jurisdiction of the Band.

(b) The Band may petition for transfer from any court of jurisdiction over child custody proceedings, as defined by the Indian Child Welfare Act, if the minor is domiciled or resides exterior to lands under the jurisdiction of the Band.

(c) Upon receipt of transfer jurisdiction from any court, the Solicitor General shall file a minor-in-need-of-care petition and an adjudicatory hearing shall be held in accordance with this title.

(d) The Band agent for service of notice of state court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the Commissioner of Human Services.

(e) The Band petition for transfer shall be filed by the Solicitor General or selected representative within five days of receipt of notice from a state court.

(f)

(1) The Band may intervene in state court child custody proceedings, as defined by the Indian Child Welfare Act at any point in the proceedings.

(2) The Solicitor General or selected representative shall file a motion to intervene within five days of receipt of notice from a state court.

(g)

(1) If a parent or Indian custodian petition to state court for transfer of jurisdiction is granted, the Court shall not refuse to accept such transfer.

(2) The Court shall accept all state court transfers of child custody proceedings.

(h) If the Band's petition for transfer is granted or if a parent or Indian custodian's petition for transfer is granted, the Band shall expeditiously transfer the minor to the jurisdiction of the Band.

(i) Upon receipt of transfer jurisdiction from state court, the Solicitor General shall file a minor-in-need-of-care petition and an adjudicatory hearing shall be held in accordance with this title.

(j) The Court shall give full faith and credit to other tribes' child custody court orders, as defined by the Indian Child Welfare Act.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, §§ 2.04, 3.01 to 3.06.

### **§ 6. Court participation in programs; grants-in-aid**

The Court is authorized to cooperate fully with any federal, tribal, public or private agency to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purpose of Chapters 1 to 10 of this title, subject to appropriation of all funds by the Band Assembly.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 2.01.

### **§ 7. Social services**

The Court shall utilize such social services as may be furnished by any tribal or federal agency, provided that they are economically administered without unnecessary duplication and expense.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 2.02.

### **§ 8. Contracts for care and placement of minors**

The Court may negotiate a contract, on behalf of the Band with tribal or federal agencies and departments for the care and placement of minors whose status is adjudicated under this Court, subject to ratification by the Band Assembly.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 2.03.

### **§ 9. Guardian Ad Litem**

(a) The Court, at any stage of a proceeding, may appoint a Guardian Ad Litem for a minor who is a party, if the minor has no parent, guardian or custodian appearing on behalf of the minor or if their interests conflict with those of a minor.

(b) The Court, under any proceeding authorized by Chapters 1 to 10 of this title, shall appoint for the purposes of that proceeding a Guardian Ad Litem for a minor where the Court finds that the minor does not have a natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship.

(c) The duties of the Guardian Ad Litem shall be to represent the minor's interest in any proceeding as required by the Court and make recommendations to the Court on disposition.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, §§ 4.04, 32.

### **§ 10. Court to inform minor or parents**

At his first appearance before the Court, the minor, who is alleged to be a juvenile offender, the parent(s), guardian or custodian, when a minor is alleged to be a minor-in-need-of-care, and the parent(s), in a termination of parental rights proceeding, shall be informed by the Court of:

(a) The allegations against him;

- (b) The right to an attorney at his own expense;
- (c) The right to testify or remain silent and that any statement made by him may be used against him;
- (d) The right to cross-examine witnesses;
- (e) The right to subpoena witnesses on his own behalf; and
- (f) The possible consequences if the allegations of the petition are found to be true.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 4.05.

#### **Cross References**

Admission of juvenile offender allegations, see 8 MLBSA § 135.

Basic rights of children taken into custody, see 8 MLBSA § 105.

Due process of law, see 1 MLBSA § 8.

Minor-in-need-of-care proceedings, parent, guardian or custodian informed of right to attorney, see 8 MLBSA § 210.

Right to confront witnesses, obtain witnesses and have assistance of counsel, see 1 MLBSA § 6.

### **§ 11. Evidentiary standards**

In all cases before the Human Resource Division, the judge/justice shall utilize a clear and convincing standard of proof.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 34.

### **§ 12. Adjudication upon child status not conviction of crime**

No adjudication upon the status of any child in the jurisdiction of the Court shall be deemed criminal or a conviction of a crime.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 2.05.

### **§ 13. Disposition or evidence not admissible in other proceedings**

The disposition of a child or of evidence given shall not be admissible as evidence against the child in any proceedings in another court.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 2.06.

### **§ 14. Standard for shelter care and detention facilities**

(a)

(1) The Chief Justice of the Court of Central Jurisdiction shall prescribe and enforce rules and regulations governing the operation of detention and shelter care facilities. He may assign the responsibilities to another qualified tribal agency.

(2) The rules and regulations shall include, but are not limited to the following:

- (A) Cleanliness standards,
- (B) Heat, water and light standards,
- (C) Personnel standards,
- (D) Visitation privileges,
- (E) Occupancy standards,
- (F) Provisions for medical and dental care and
- (G) Provisions for food, furnishing, clothing and toilet articles.

(b) The Chief Justice of the Court of Central Jurisdiction shall prescribe and enforce written policies and procedures governing the administration of detention and shelter care facilities. Such policies and procedures shall include, but are not limited to the following:

(1) A minor shall not be punished, ridiculed or criticized for expressing through speech, custom or dress, the minor's Indian and tribal heritage.

(2) A minor shall be allowed to wear his hair according to his personal taste. The minor shall not be punished, ridiculed or criticized for the hairstyle he selects.

(3) A minor may wear his own clothes rather than clothes supplied by the detention facility, as long as they comply with minimum standards of cleanliness.

(4) Incoming and outgoing mail may be inspected for contraband, but shall not be read.

(5) Whenever possible, the minor shall be allowed to attend the school in which he is enrolled. School work and educational assistance, at the minor's level of development, shall be provided for the minor in detention facilities.

(6) A minor shall be allowed to attend traditional ceremonials provided that he is accompanied by a parent, guardian or custodian, has received consent to do so by the child's Court Counselor, parent or custodian, who has been delegated the authority to consent from the judge/justice of the Court of Central Jurisdiction and returns immediately to the detention or shelter care facility

(7) A minor shall be allowed to attend the funeral and any related activities of his brother, sister, mother, father, aunt, uncle, grandmother grandfather or cousin, whether they be natural or adopted provided that:

(A) His parent, guardian or custodian request and receive permission from the judge/justice of the Human Resource Division and

(B) He is accompanied by a parent, guardian or custodian and

(C) He return immediately to the shelter care or detention facility.

(8) A minor shall be given the opportunity to engage in physical exercise every day.

(9) A minor shall not be locked alone in a room unless there exists a reasonable belief that he may cause physical injury to himself or others if not locked alone. An emergency fire exit must be accessible and toilet facilities must be available to the minor. While a minor is locked alone in a room, he must be visited at least once an hour. The confinement shall not exceed a four hour time period.

(10) A minor shall not be punished by physical force, solitary confinement or deprivation of meals or family visits.

(11) A minor in a detention facility shall not be required to perform work duties, excepting household chores.

(c) A judge/justice shall have the authority to close any facility in violation of this section.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 33.

#### **Cross References**

Duties of chief Justice, see 5 MLBSA § 114.

### **§ 15. Legal duties of Human Resource Officers and Child Social Workers**

(a) The Human Resource Officer and Child Social Workers shall carry out duties conferred throughout Chapters 1 to 10 of this title. The Human Resource Officer and Child Social Workers duties do not include acting on behalf of the Band against the child. Their sole responsibility is to serve as a friend of the child, on the child's behalf and in the child's best interest.

(b) The duties and responsibilities of the Human Resources Officer and Child Social Worker of the Band shall include, but not be limited to, the following:

(1) Make investigations as provided in this title, or as directed by the Court;

(2) Make reports to the Court as provided in this title or as directed by the Court;

(3) Conduct informal hearings with the minor and the minor's parent(s), guardian or custodian;

(4) Place a minor in detention or shelter care as provided in this title; and

(5) Perform such other duties in connection with the care, custody or transportation of minors as the Court may require.

(c) The Human Resource Officer must have an educational background and/or prior experience in the field of delivering social services to youth.

(d) The Human Resource Officer shall identify and develop resources on the reservation designed to enhance each minor's potential as a viable member of the Band community.

(e) The Human Resource Officer shall not be employed at or perform the duties of a prosecutor, Solicitor General or law enforcement official.

(f) The Human Resource Officer shall not testify against any minor in any proceeding under this title or any adjudicatory proceeding.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 30.

### **§ 16. Obligations of Solicitor General**

(a) The Solicitor General shall represent the people of the constituent Band of the Mille Lacs Band of Chippewa Indians under Chapters 1 and 3 to 10 of this title.

(b) The Solicitor General's duties shall include, but not be limited to:

(1) Filing petitions with the Court as provided in Chapters 1 and 3 to 10 of this title;

(2) Representing the Band in all proceedings under Chapters 1 and 3 to 10 of this title; and

(3) Performing such other duties as the Court may order.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 31.

#### **Cross References**

Duties of Solicitor General, see 4 MLBSA § 18.

### **§ 17. State of Minnesota: agreement regarding Indian child custody proceedings**

The Band Assembly hereby authorized the Chief Executive to officially notify the state of Minnesota-Commissioner of Department of Human Services of the intention of the

Mille Lacs Band of Chippewa Indians to revoke the agreement regarding Indian Child Custody Proceedings with cause following a minimum of thirty days after delivery of said written notice to the Commissioner of Human Services. The revocation shall not affect any action or proceeding over which a state court has previously assumed jurisdiction.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 36.

**CHAPTER 2**

**CURFEW**

**Section**

- 71. Purposes and Findings
- 72. Definitions
- 73. Prohibited Acts
- 74. Exceptions
- 75. Prosecution
- 76. Affirmative Defenses
- 77. Reasonable Grounds
- 78. Penalties
- 79. Sovereign Immunity

**Historical and Statutory Notes**

The Preamble to and §§ 101.1 and 109 of Band Ordinance 31-03 (this Chapter) provide:

**“Preamble:** This Ordinance shall regulate the conduct of juveniles in Public Places during night time hours for the purposes of protecting Juveniles from criminal activities, preventing Juveniles from committing crimes, enhancing parental control of their Juvenile children and protecting the peace and well-being of the community.”

**“Section 101. Purposes and Findings:**

- 1. This Ordinance repeals and replaces Title 8 MLBSA §§ 71 and 72 and 24 MLBSA § 1261.”

**“Section 109. Severability.** If the Court of Central Jurisdiction adjudges any provisions of this ordinance to be invalid, such judgment shall not affect any other provisions of this Ordinance not specifically included in the judgment.”

## § 71. Purposes and Findings

(a) The Mille Lacs Band of Ojibwe Indians finds that there has been an increase in violence and crime by and against Juveniles on Band Lands in recent years.

(b) The lack of maturity and experience makes Juveniles more susceptible to becoming victims or perpetrators of crimes.

(c) The Mille Lacs Band finds that the increase in criminal activity by and against Juveniles creates a need for an Ordinance that will address the causes of the problem and aid in the prevention of crime.

### Historical and Statutory Notes

**Source:**

Band Ordinance 31-03, § 101.2-4

## § 72. Definitions

(a) **Authorized Adult.** An Authorized Adult is any person who is at least eighteen (18) years of age and authorized by a Parent to have custody and control of a Juvenile.

(b) **Band Lands.** Band Lands means lands owned by or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe Indians, or one or more members of the Mille Lacs Band of Ojibwe Indians, and subject to the jurisdiction of the Mille Lacs Band.

(c) **Emergency.** Emergency means an unforeseen circumstance that call for immediate action. The term includes, but is not limited to, a fire, natural disaster, automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.

(d) **Juvenile.** Juvenile means a person under the age of eighteen (18) years but does not include a person under eighteen (18) years of age who is married or has been legally emancipated.

(e) **Knowingly.** Knowingly means an action or inaction that is taken with such knowledge as a Parent or Authorized Adult is reasonably expected to have concerning the whereabouts of the Juvenile in his or her care, or such knowledge as a Person Operating a place of business is reasonably expected to have concerning the persons on the premises of such business.

(f) **Parent.** Parent means any person having legal custody of a Juvenile: (1) as a natural parent, adoptive parent or step-parent; (2) as a legal guardian; or, (3) pursuant to a court order.

(g) **Public Place.** A public place means any public or private location or area open to the public and includes, but is not limited to, streets, highways, roads, parks, public recreation areas, entertainment or civic facilities, schools, and the common areas of hospitals, clinics, apartment houses, office buildings, garages and shops.

(h) **Serious Bodily Harm.** Serious Bodily Injury means bodily injury that creates a substantial risk of death or that causes death or serious or permanent disfigurement, loss or protracted impairment of the function of any bodily member or organ.

(i) **Person Operating.** Person Operating means any individual, corporation, association, partnership, or other business entity managing a place of business on Band Lands that is open to the public.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 102

### **§ 73. Prohibited Acts**

(a) In accordance with the cultural law of the Mille Lacs Band of Ojibwe Indians, all children under the chronological age of ten (10) who are subject to the jurisdiction of the Mille Lacs Band shall be subject to curfew that shall commence at the time the sun is fully set in the western sky. Except as provided in Section 74 of this Chapter, it is unlawful for such a child to be present in any Public Place on Band Lands without a Parent or Authorized Adult from sunset to sunrise.

(b) Except as provided in Section 74 of this Chapter, it is unlawful for a Juvenile who is subject to the jurisdiction of the Mille Lacs Band to be present in any Public Place on Band Lands without a Parent or Authorized Adult:

(1) between 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday and 5:00 a.m. of the following day; or

(2) between 11:00 p.m. on any Friday or Saturday and 5:00 a.m. of the following day.

(c) Any Parent or Authorized Adult subject to the jurisdiction of the Mille Lacs Band who knowingly or through negligent supervision permits a Juvenile to be present at any Public Place in violation of paragraphs (a) or (b) of this section shall be guilty of a civil misdemeanor.

(d) Any Person Operating or otherwise in charge of any Band-owned business to knowingly permits any Juvenile to be present at any Public Place maintained by such business in violation of paragraphs (a) or (b) of this section shall be guilty of a civil misdemeanor.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 103

### **§ 74. Exceptions**

It shall not be unlawful under Section 73 of this Chapter for a Juvenile to be present at a Public Place at any time if:

- (a) the Juvenile is accompanied by a Parent or Authorized Adult;
- (b) the Juvenile is involved in, or attempting to remedy, alleviate or respond to, an Emergency;
- (c) the Juvenile is engaged in lawful employment or while traveling to and from such employment;
- (d) the Juvenile is attending an activity that is sponsored by a school or religious organization, a traditional ceremony, or other social or recreational activity supervised by adults, or is reasonably traveling to and from such activity; or
- (e) the Juvenile, with the authority of a Parent, is on the public right-of-way, boulevard or sidewalk abutting the Juvenile's residence.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 104

### **§ 75. Prosecution**

(a) A prosecution for a violation of Section 73 of this Chapter may only be initiated by the Solicitor General's Office. To initiate such a prosecution, the Solicitor General's Office must file a complaint in the Court of Central Jurisdiction within ninety (90) days of the date on which the violation occurred. The complaint shall contain:

- (1) a citation to the specific provision(s) of this Chapter allegedly violated; and

(2) the name, age and address, if known, of the defendant and, if the defendant is a Juvenile, of his or her parents, if known; and

(3) a plain and concise statement of the facts upon which the allegations are based.

(b) The complaint must be personally served on the defendant within seven (7) days after it is filed in the Court of Central Jurisdiction. If the defendant is out of the jurisdiction of the Mille Lacs Band of Ojibwe Indians or is otherwise unable to be personally served, the seven (7) day period shall begin after the defendant has been located within the jurisdiction of the Mille Lacs Band.

(c) Preliminary Inquiry.

(1) A preliminary inquiry shall be held within thirty (30) days after the complaint has been filed and the defendant has been properly served, unless the Court finds good cause to the contrary. In no event shall a preliminary inquiry take place later than forty-five (45) days after the complaint has been filed and the defendant has been properly served.

(2) The defendant shall enter a plea of guilty or not guilty at the preliminary inquiry. If the defendant stands mute or refuses to enter a plea, then the Court shall enter a plea of not guilty for the defendant.

(d) Pretrial Hearing and Adjudicatory Hearing. The Court shall schedule a pretrial hearing to be held within fifteen (15) days after the preliminary hearing, and an adjudicatory hearing to be held within forty-five (45) days after the preliminary hearing. The time for the pretrial hearing and adjudicatory hearing may be extended if the defendant agrees to waive the time limits.

(e) Confidentiality of Records. All court records under this Chapter shall be confidential and shall not be open to the public for inspection. Any conviction of a Juvenile under this Chapter shall become sealed once the Juvenile reaches eighteen (18) years of age.

(f) Appeal. Appeals shall be conducted according to 24 MLBSA § 2501 et seq. A party may appeal a final Order by filing with the Clerk of the Court a written Notice of Appeal within thirty (30) days of the date the Order was filed.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 105

## **§ 76. Affirmative Defenses**

It shall be an affirmative defense to prosecution under Section 73(d) of this Chapter that:

(a) the owner, manager or employee of any business or other enterprise open to the public promptly notified the Mille Lacs Band police department that a Juvenile was present on the premises in violation of Section 73(a) or (b) and refused to leave when requested; or

(b) the owner, manager or employee reasonably relied upon the Juvenile's representation as to proof of age. Proof of age may be established by Band identification, State driver's license, school identification card, or other verifiable means.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 106

## **§ 77. Reasonable Grounds**

A police officer may make an arrest or issue a citation under this Chapter if the officer has reasonable grounds to believe that a violation of this Chapter has occurred and no exception applies.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 107

## **§ 78. Penalties**

(a) Except as otherwise provided in this Chapter, violations of Sections 73(a) - (c) will be prosecuted pursuant to 8 MLBSA Chapter 3 and will be subject to the penalties therein. In addition, the Court shall also sentence the Juvenile and/or the Juvenile's Parent(s) or Authorized Adult(s) as follows:

(1) The first offense shall be punishable by a fine of \$25.00.

(2) The second offense shall be punishable by a fine of \$50.00.

(3) The third and any additional offenses shall be punishable by a fine of \$75.00. In addition, the Court shall require the Mille Lacs Band's Family Services Department to investigate the Juvenile's social and education background for the purposes of making a recommendation to the Office of

Solicitor General as to whether a Petition For a Child In Need Of Protective Services (CHIPS) is required.

(b) Nothing in this section shall preclude the Court from alternative sentencing if deemed in the best interest of the Juvenile.

(c) If a Juvenile cannot pay the fine imposed by the Court under this section, the Juvenile's Parent(s) or Authorized Adult(s) shall pay the fine.

(d) A violation of Section 73(d) shall be a civil misdemeanor and punishable by a fine not to exceed \$100.00 and/or other alternative sentencing, as deemed necessary by the Court.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 31-03, § 108

### **§ 79. Sovereign Immunity**

Nothing contained in this Chapter shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe Indians.

## **CHAPTER 3**

### **JUVENILE OFFENDERS**

**Section**

- 101. Juvenile offender complaint.
- 102. Warrants.
- 103. Custody.
- 104. Law enforcement officer's duties.
- 105. Basic rights of children taken into custody.
- 106. Fingerprints and photographs.
- 107. Questioning in custody.
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- 110. Detention pending hearing.
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149. Contempt of court.

#### **Cross References**

- Compulsory attendance of school age pupils see 9 MLBSA § 19.  
 Contributing to delinquency of minor, see 24 MLBSA § 1260.  
 Criminal procedure, juvenile delinquency, see 24 MLBSA § 4301 et seq.  
 Liquor violations, see 24 MLBSA § 1258.  
 Prohibited drugs, consumption by minors, see 23 MLBSA § 5.

### **§ 101. Juvenile offender complaint**

A complaint may be filed by a person who has knowledge of the facts alleged. The complaint shall be signed by the complainant. The complaint shall contain:

- (a) A citation to the specific statutory provisions of this title which give the Court jurisdiction of the proceedings,
- (b) A citation to the Mille Lacs Band Statutes Annotated provision or custom and tradition which the minor is alleged to have violated,

(c) Name, age and address of the minor who is the subject of the complaint,

(d) The name and address of parents, custodian or guardian, if known and

(e) A plain and concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged facts occurred.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 6.

#### **Cross References**

Minor-in-need-of-care complaint, see 8 MLBSA § 201.

### **§ 102. Warrants**

(a) The Court may issue a warrant directing that a minor be taken into custody if the Court finds probable cause to believe the minor has committed the acts alleged in the complaint, and there is probable cause to believe that the child will not appear for a hearing, or is in immediate and serious emotional or physical harm or would commit additional criminal offenses.

(b) The Court may issue a warrant authorizing a law enforcement officer to search for a minor if there is probable cause to believe that the minor is within the Court's jurisdiction and a custodial warrant has been issued for the alleged juvenile offender.

(c) The Court may issue a warrant authorizing a law enforcement officer to search for and seize property when the property has been obtained or is possessed in a manner which constitutes a delinquent act; or is designed or intended for use, or which is, or has been used as a means of committing a delinquent act; or would be material evidence in a juvenile offender proceeding.

(d) The Court may issue a warrant for a person's arrest immediately upon the failure to appear, either in person or by counsel, in Court as directed for contempt of court.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 7.

### **Cross References**

Criminal procedure. Warrant, summons and arrest, see 24 MLBSA § 4101 et seq.  
Unreasonable searches and seizures, see 1 MLBSA § 2.

### **§ 103. Custody**

A minor may be taken into custody by a law enforcement officer if:

- (a) The officer has reasonable grounds to believe a delinquent act has been committed and that the minor has committed the delinquent act; or
- (b) The minor is found in surroundings or conditions which pose an immediate and serious threat of emotional or physical harm; or
- (c) A Warrant pursuant to 8 MLBSA § 102 has been issued for the minor.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 8.

### **Cross References**

Criminal procedure, Warrant, summons and arrest, see 24 MLBSA § 4101 et seq.

### **§ 104. Law enforcement officer's duties**

A law enforcement officer who takes a minor into custody pursuant to 8 MLBSA § 103 shall proceed as follows.

- (a) An arresting officer shall give the warnings listed in 8 MLBSA § 105 to any minor he takes into custody prior to any questioning.
- (b) An arresting officer shall release the minor to the minor's parent, guardian or custodian, and issue verbal counsel or warning as may be appropriate, unless shelter care or detention is necessary.
- (c) If the minor is not released, an arresting officer shall make immediate and recurring efforts to notify the minor's parent, guardian or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care or detention is made by the Human Resource Officer pursuant to 8 MLBSA § 109. If the minor is not released, the minor shall be taken immediately to the Human Resource Officer by the arresting officer.

### Historical and Statutory Notes

**Source:** Band Statute 1096-MLC-28, § 9.

### Cross References

Criminal procedure, Warrant, summons and arrest, see 24 MLBSA § 4101 et seq.

## § 105. Basic rights of children taken into custody

At the time a minor is taken into custody as a juvenile offender, the arresting officer shall give the following warning:

The minor has a right to remain silent. Anything the minor says can be used against the minor in court as he is presumed to be guilty until he can prove his innocence. The minor has a right to the presence of an attorney, parents or person of his choice during questioning. If he cannot afford an attorney, the Court is not required to provide free legal service, the Court will assist the minor in obtaining the services of any attorney through available services and parents of the minor cannot waive these rights for the minor.

### Historical and Statutory Notes

**Source:** Band Statute 1096-MLC-28, § 4.

### Cross References

Assistance of counsel, see 1 MLBSA § 6.

Court to inform minor of rights, see 8 MLBSA § 11.

Due process of law, see 1 MLBSA § 8.

Self-incrimination in criminal proceeding, see 1 MLBSA § 4.

## § 106. Fingerprints and photographs

(a) An alleged juvenile offender shall not be fingerprinted or photographed without the consent of the Court.

(b) If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reasonable grounds to believe that the fingerprints are those of a minor in custody, he may fingerprint the minor for the purpose of immediate comparison with the latent fingerprints, only with the consent of the Court. Copies of the fingerprints shall be immediately destroyed, if the comparison is negative, or if the minor is not referred to the Court.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, §§ 4.02, 25.

### **§ 107. Questioning in custody**

A minor alleged to be a juvenile offender who is taken into custody and placed in detention or shelter care shall not be questioned except to determine identity.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 4.01.

### **§ 108. Lineup for identification**

The Court may authorize a lineup that includes a minor in custody as an alleged juvenile offender for identification purposes only if the minor and the minor's parent, guardian or custodian give their written consent and the minor is represented by Counsel at the time of the lineup.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 24.

### **§ 109. Court Counselor's duties**

(a) The Court Counselor shall not place a minor in detention unless a complaint is filed in accordance with 8 MLBSA § 101 or the court orders that a minor be taken into custody pursuant to 8 MLBSA § 102.

(b) If the minor's parent, guardian or custodian has not been contacted, the Court Counselor shall make immediate and recurring efforts to inform them that the minor has been taken into custody and release the minor to the parent, guardian or custodian, unless detention or shelter care is immediately necessary.

(c) If a minor is not released to his parent, guardian or custodian, the Court Counselor shall place the minor in detention or shelter care, pending the preliminary inquiry.

(d) If a minor is not released to his parent, guardian or custodian, the Court Counselor shall immediately explore alternative preadjudication custody arrangements and prepare recommendation for temporary care and custody for presentation at the preliminary inquiry.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 10.

### **§ 110. Detention pending hearing**

A minor alleged to be a juvenile offender may be detained, pending a court hearing, in the following places:

- (a) A foster care facility on the reservation licensed or approved by the Band;
- (b) A detention home on the reservation approved by the Band; or
- (c) A private family home on the reservation approved by the Band.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28 § 11.

#### **Cross References**

Minors-in-need-of-care, shelter care, see 8 MLBSA § 206.  
Standard for shelter care and detention facilities, see 8 MLBSA § 15.

### **§ 111. Detention in jail**

A minor who is sixteen years of age or older may be detained in a county jail or facility used for the detention of adults only if:

- (a) A facility in 8 MLBSA § 110 is not available or would not assure adequate supervision of the minor;
- (b) Detention is in a cell separate, but not removed, from sight and sound of adults, whenever possible;
- (c) Adequate supervision is provided twenty-four hours a day.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 11.01.

## **§ 112. Preliminary inquiry-minor placed in detention or shelter care**

(a) If a minor is placed in detention or shelter care by the Human Resource Officer pursuant to 8 MLBSA § 109(c), the Court shall conduct a preliminary inquiry within twenty-four hours for the purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act and whether continued detention or shelter care is necessary, pending further proceedings.

(b) The minor must be released to parent, guardian, custodian or other suitable person, unless there is reason to believe that the child would endanger himself or others; not return for a court hearing; not remain in care or control of the person the child is to be released to; or that the child's health or welfare would be endangered.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 12.

## **§ 113. Preliminary inquiry-minor not in detention or shelter care**

If a minor has been released to his parent, guardian or custodian, the Court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 12.01.

## **§ 114. Notice of preliminary inquiry**

(a) Notice of the preliminary inquiry shall be given to the minor and his parent, guardian or custodian and their counsel as soon as the time for the inquiry has been established. The notice shall contain:

- (1) The name of the court;
- (2) The title of the proceedings;
- (3) A brief statement of the substance of the allegations against the minor; and
- (4) The date, time and place of the preliminary inquiry.

(b) The notice shall be delivered by a law enforcement officer, or an appointee of the Court.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 12.03.

**§ 115. Presence of parent, guardian or custodian at preliminary inquiry**

If the minor's parent, guardian or custodian is not present at the preliminary inquiry, the Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the Court shall recess for not more than twenty-four hours and direct the Human Resource Officer to make continued efforts to obtain the presence of a parent, guardian or custodian.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, §12.02.

**§ 116. Probable cause**

The circumstances that give rise to the complaint or the taking of the minor into custody and the need for detention or shelter care. If the Court finds that probable cause exists to believe the minor performed the delinquent act, the minor may be released to his parents and ordered to appear at the adjudicatory hearing.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 12.04.

**§ 117. Release to responsible adult**

If the act is serious enough to Warrant continued detention or shelter care and there is reasonable cause to believe the minor will run away so that he will be unavailable for further proceedings or there is reasonable cause to believe that the minor will commit a serious act causing damage to person or property, the Court may release the minor to a relative or other responsible adult tribal member, if the parent, guardian or custodian of the minor consents to the release. If the minor is ten years of age or older, the minor and his parent, guardian or custodian must both consent to the release.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 12.05.

## **§ 118. Continued detention or shelter care**

Upon a finding that probable cause exists to believe that the minor committed the alleged delinquent act and that there is a need for detention or shelter care and the minor's detention or shelter care shall be continued, the Court shall consider the Court Counselor's recommendation prepared pursuant to 8 MLBSA § 109(d).

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 118.

## **§ 119. Dismissal of complaint**

If probable cause exists to believe the minor committed the alleged delinquent act and the need for detention or shelter care is not found, the complaint shall be dismissed with or without prejudice and the minor released.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 12.061

## **§ 120. Investigation by Human Resource Officer**

(a) The Human Resource Officer shall make an investigation within twenty-four hours of the preliminary inquiry or the release of the minor to determine whether the interests of the minor and the Band require that further action be taken.

(b) Upon the basis of his investigation, the Human Resource Officer may recommend that no further action be taken. Suggest to the minor, his parent, guardian or custodian that they appear for an informal hearing pursuant to 8 MLBSA § 121 et seq.; a petition be filed; or a transfer petition be filed.

(c) The Human Resource Officer may recommend that the Solicitor General file a petition pursuant to 8 MLBSA § 127 in the Court to initiate further proceedings. The petition shall be filed within forty-eight hours if the minor is in detention or shelter care. If the minor has been previously released to his parent, guardian, custodian, relative or responsible adult, the petition shall be filed within five days.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 13.

## **§ 121. Informal hearing**

The Human Resource Officer may hold an informal conference with the minor and the minor's parent, guardian or custodian to discuss alternatives to the filing of a petition if:

- (a) The admitted facts bring the case within the jurisdiction of the Court;
- (b) An informal adjustment of the matter would be in the best interest of the minor and the Band; and
- (c) The minor and his parent, guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 14.

## **§ 122. Notice of informal hearing**

- (a) Notice of the informal hearing shall be given to the minor and his parent, guardian or custodian and their counsel as soon as the time for the hearing has been established.
- (b) The notice shall contain:
  - (1) The name of the Court;
  - (2) The title of the proceeding; a brief statement of the substance of the allegation against the minor; and
  - (3) The date, time and place of the informal hearing.
- (c) The notice shall be delivered by a law enforcement officer or an appointee of the Court. If the notice cannot be delivered personally, the notice shall be delivered by registered mail.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28§ 14.01.

## **§ 123. Subpoenas**

The provisions of 8 MLBSA §§ 121 to 126 do not authorize the Human Resource Officer to compel any person to appear at any conference, produce any papers or visit any place.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 14.03.

### **§ 124. Inadmissibility of statements**

No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any proceedings against the minor under this chapter.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 14.02.

### **§ 125. Informal adjustment**

- (a) At the informal hearing, the Human Resource Officer may:
- (1) Refer the minor and the parent, guardian or custodian to the community agency for needed assistance.
  - (2) Order terms of supervision calculated to assist and benefit the minor which regulate the minor's activities and which are within the ability of the minor to perform.
  - (3) Accept an offer of restitution, if voluntarily made by the minor.
  - (4) Recommend that the Solicitor General file a petition pursuant to 8 MLBSA § 127.
- (b) Any informal adjustment period shall not exceed six months.
- (c) The Human Resource Officer shall set forth in writing the agreements and conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, §§ 14.04 to 14.06.

## **§ 126. Progress reviews**

The Human Resource Officer shall review the minor's progress every thirty days. If, at anytime after the initial thirty day period, the Human Resource Officer concludes that positive results are not being achieved, the Human Resource Officer shall recommend that the Solicitor General file a petition pursuant to 8 MLBSA § 127.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 14.07.

## **§ 127. Petition**

(a) Proceedings under this chapter shall be instituted by a petition filed by the Solicitor General on behalf of the Band and in the interests of the minor. The Solicitor General shall file no petition with the Court unless the Commissioner of Human Services shall certify to the facts contained therein. No Human Resource Officer shall certify to any facts contained therein on any petition, however this shall not relieve any Human Resource Officer from civil liability for malfeasance in the performance of their official duties.

(b) The petition shall state:

- (1) The name, birthdate and residence of the minor.
- (2) The names and residences of the minor's parent, guardian or custodian.
- (3) A citation to the specific statutory provision of this title which gives the Court jurisdiction of the proceedings.
- (4) A citation to the Mille Lacs Band Statutes Annotated provision which the minor is alleged to have violated.
- (5) If the minor is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 15.

## **§ 128. Date of adjudicatory hearing**

(a) Upon receipt of the petition, the Court Clerk shall set a date for the hearing which shall not be more than five days after the Court received the petition from the Solicitor General. Mediation required pursuant to statute shall be waived, if the adjudicatory hearing is not held within ten days after the filing of the petition.

(b) Trial upon the merits shall commence within thirty days of filing of the complaint or be dismissed with or without prejudice.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, §§ 13, 16.

## **§ 129. Continuance**

(a) If the hearing is continued upon motion of the minor, the petition shall be dismissed and cannot be filed again.

(b) The hearing is continued upon motion of the Solicitor General by reason of the unavailability of material evidence or witnesses and the Court finds the Solicitor General has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 16.01.

## **§ 130. Summons**

(a) At least five days prior to the adjudicatory hearing, the Court shall issue summons to:

- (1) The minor;
- (2) The minor's parent, guardian or custodian;
- (3) Any person the Court believes necessary for the proper adjudication of the hearing; and
- (4) Any person the parties believe necessary for the proper adjudication of the hearing.

(b) The summons shall contain:

- (1) The name of the Court;
- (2) The title of the proceedings; and
- (3) The date, time and place of the hearing.

(c) A copy of the petition shall be attached to the summons.

(d) The summons shall be delivered personally by a tribal law enforcement officer or appointee of the Court. If the summons cannot be delivered personally, the Court may deliver the summons by registered mail.

(e) If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court and a bench Warrant shall be issued.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 16.04.

### **§ 131. Adjudicatory hearing**

An adjudicatory hearing shall be conducted within ten days of receipt of the petition by the Court. The adjudicatory hearing shall be held for the sole purpose of determining the guilt or innocence of a juvenile offender or for determining if the minor is a minor-in-need-of-care.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 17.

### **§ 132. Testimony at adjudicatory hearing**

(a) The Court shall hear testimony concerning the circumstances which gave rise to the complaint.

(b) No evidence that would be inadmissible in a civil proceeding shall be admitted.

(c) The parties shall have the right to cross-examine and present witnesses.

(d) Human Resource Officers shall testify at any Court hearing to which they have factual knowledge of the circumstances surrounding the cause of action.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, §§ 15, 17.01 to 17.03.

**§ 133. Burden of proof; finding**

If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Court shall find the minor to be a juvenile offender and proceed to the dispositional hearing.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 17.04.

**§ 134. Appealability of finding**

A finding that a minor is a juvenile offender constitutes a final order for purpose of appeal.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 16.02.

**§ 135. Admission of allegations**

If the minor admits the allegations of the petition, the Court shall proceed to the dispositional stage only if the Court finds:

(a) The minor fully understands his rights as set forth in 8 MLBSA § 11 and fully understands the potential consequences of his admission.

(b) The minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis for Court action.

(c) The minor has not, in his purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

### Historical and Statutory Notes

Source: Band Statute 1096-MLC-28, § 16.03.

## § 136. Predispositional report

(a) The Human Resource Officer shall prepare and present a written report to the Court at least one day before a dispositional hearing.

(1) The report shall contain a place for the care and assistance to the minor or his parents, guardian or custodian which is calculated to resolve the problems presented in the petition.

(2) The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan.

(3) Preference shall be given to the dispositional alternatives which are listed in 8 MLBSA § 141 and select that which is the *least restrictive* of the minor's freedom and is consistent with the interests of the Band.

(4) The report shall contain specific reasons for not recommending placement of the minor with his parent, guardian or custodian.

(b) The Human Resource Officer shall present the predispositional report to the Court, the person selected by the minor to represent him and the Solicitor General at least one day before the dispositional hearing.

### Historical and Statutory Notes

Source: Band Statute 1096-MLC-28, § 18.

## § 137. Medical examination

(a) The Court may order a medical examination for a minor who is alleged to be a juvenile offender.

(b) The Court may order a mental and/or physical examination at any time subsequent to the time that the party who is the subject of the cause admits the allegations of the petition, or if he does not admit, at any time

subsequent to the time the Court finds the allegations of the petition have been proved.

(c) The report of a medical examination shall not be admissible in evidence, nor shall it be considered by the Court, at the adjudicatory hearing in any juvenile Court case. It shall be admissible in evidence at the dispositional hearing in any juvenile Court case.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 23

**§ 138. Dispositional hearing**

A dispositional hearing shall take place no more than ten days after the adjudicatory hearing.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28 § 19.

**§ 139. Notice of dispositional hearing**

(a) Notice of the dispositional hearing shall be given to the minor and his parent, guardian or custodian and their counsel at least forty-eight hours before the hearing.

(b) A dispositional hearing notice shall contain:

- (1) The name of the Court;
- (2) The title of the proceedings;
- (3) A statement that the hearing is to determine the disposition of the case; and
- (4) The date, time and place of the dispositional hearing.

(c) The notice shall be delivered by a law enforcement officer or an appointee of the Court. If the notice cannot be delivered personally, the notice shall be delivered by registered mail.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, §§ 19.02 to 19.04.

## **§ 140. Evidence**

- (a) At the dispositional hearing, the Court shall hear evidence on the question of proper disposition.
- (b) At the dispositional hearing, the Court shall review and consider the predisposition report submitted by the Human Resource Officer and afford the parents an opportunity to controvert the factual contents and conclusions of the reports. The Court shall also consider the alternative predisposition report prepared by the minor and his attorney, if any.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, §§ 19.01, 19.05.

## **§ 141. Dispositional orders**

- (a) If a minor has been adjudged a juvenile offender, the Court may make the following dispositions:
  - (1) Place the minor on probation subject to conditions set by the Court;
  - (2) Place the minor in an institution or agency designated by the Court.
- (b) The dispositional orders are to be in effect for the time limit set by the Court, but no order shall continue after the minor reaches the age of eighteen years of age.
- (c) The dispositional orders are to be reviewed at the Court's discretion, but at least once every six months.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 19.07.

## **§ 142. Appealability of dispositional order**

The dispositional order constitutes a final order for purposes of appeal.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 19.06.

### **§ 143. Modification of dispositional order**

(a) A dispositional order of the Court may be modified upon a showing of change of circumstances.

(b) The Court may modify a dispositional order at any time upon the motion of the following:

- (1) The minor,
- (2) The minor's parent, guardian or custodian and
- (3) The Court Counselor.

(c) If the modification involves a change of custody the Court shall conduct a hearing pursuant to subsection (d) to review its dispositional order.

(d) A hearing to review a dispositional order shall be conducted as follows:

- (1) Notice in writing or the hearing shall be given to the minor, the minor's parent, guardian or custodian and their counsel at least forty-eight hours before the hearing. The Notice shall contain the name of the Court, the title of the proceedings, a statement that the hearing is to review the disposition and the date, time and place of the hearing. The notice shall be delivered by a tribal law enforcement officer or an appointee of the Court.
- (2) The Court shall review the performance of the minor, the minor's parents, guardian and custodian and the Human Resource Officer and other persons providing assistance to the minor and the minor's family.
- (3) In determining modification of disposition, the procedures prescribed in 8 MLBSA §§ 136 and 138 to 143 shall apply.
- (4) If the request for review of disposition is based upon an alleged violation of a Court order, the Court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 19.08.

**§ 144. Record of hearings**

A record of all hearings under this title shall be made and preserved.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 20.

**§ 145. Confidentiality of court records**

All court records shall be confidential and shall not be open to inspection to any, but the following: the minor, the minor's parent, guardian or custodian, the Court Counselor, the Solicitor General or the parents and the minor's attorney.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 20.01.

**§ 146. Confidentiality of law enforcement records**

Law enforcement records and files concerning a minor shall be kept separate from the records and files of adults. All law enforcement records and files shall be confidential and shall not be open to inspection to any, but the following: the minor, the minor's parent, guardian or custodian, the Court Counselor, or the Solicitor General, the parents and the minor's attorney.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 20.02.

**§ 147. Destruction of records**

When a minor who has been the subject of any proceeding before the Court attains his eighteenth birthday, the Chief Justice of the Tribal Court shall order the Clerk of Court to destroy both the Court records and the law enforcement records.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 20.03.

## **§ 148. Appeal**

(a) Any party to a Court hearing may appeal a final order or disposition of the case by filing a written notice of appeal with the Court within thirty days of the final order of disposition.

(b) A decree or disposition of a hearing may be stayed by such appeal.

(c) All appeals shall be conducted in accordance with 24 MLBSA § 2501 et seq.

(d) For purposes of appeal, a record of the proceedings shall be made available to the minor, his parents, guardian or custodian. Costs of obtaining this record shall be paid by the party seeking the appeal.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 21.

## **§ 149. Contempt of court**

All willful disobedience or interference with any order of the Court constitutes contempt of court. The Court may punish an adult for contempt of court in accordance with Band Statute 1143-MLC-4, Title IX [repealed].

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 22.

## **CHAPTER 4**

### **MINORS IN NEED OF CARE**

**Superseded by Chapter 13 (§§ 3101-3241) of this Title**

## **CHAPTER 5**

### **DUTY TO REPORT ABUSE AND NEGLECT**

**Superseded by Chapter 13 (§§ 3101-3241) of this Title**

## CHAPTER 6

### DOMESTIC ABUSE PREVENTION

#### Section

- 401. Definitions.
- 402. Petition for order for protection; docket priority.
- 403. Filing of petition.
- 404. Hearing
- 405. Relief by Court.
- 406. Temporary order.
- 407. Service of order.
- 408. Assistance of Band Law Enforcement Agency.
- 409. Effect of leaving household.
- 410. Security or bond.
- 411. Modification of order.
- 412. Titles.
- 413. Copy to Law Enforcement Agency.
- 414. Violation of order.
- 415. Immunity of Law Enforcement Officers.

#### Cross References

- Assault and battery, see 24 MLBSA §§ 1101, 1102.
- Child care staff, abuse or neglect of children, see 8 MLBSA § 1207.
- Duty to report abuse, see 8 MLBSA § 301 et seq.

#### § 401. Definitions

(a) "Domestic abuse" is hereby defined as physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members.

(b) "Family or household members" is defined as the spouse, parents and children, person related by consanguinity, and persons jointly residing in the same dwelling unit.

#### Historical and Statutory Notes

**Source:** Band Statute 1096-MLC-28, § 47.

## **§ 402. Petition for order for protection; docket priority**

(a) There shall exist an action known as a petition for an order for protection in cases of domestic abuse before the Court of Central Jurisdiction.

(b) All actions brought under this chapter shall be given docket priority by the Court of Central Jurisdiction.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 47.

## **§ 403. Filing of petition**

(a) A petition for relief under this chapter may be made by any family or household member on behalf of himself or on behalf of minor family or household members.

(b) A petition for relief shall allege the existence of domestic abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(c) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition or other action between the parties.

(d) The Court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section by a person not represented by counsel.

(e) The Court shall advise a petitioner under subsection (d) of the right to file a motion and affidavit and to sue in forma pauperis pursuant to Band Statute and shall assist with the writing and filing of the motion and affidavit.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 48.

## **§ 404. Hearing**

Upon receipt of the petition, the Court shall order a hearing which shall be held not later than 14 days after the date of the order. Personal service shall be made upon the

respondent not less than five days prior to the hearing. In the event that service cannot be made, the Court may set a new date.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 49.

### **§ 405. Relief by Court**

(a) Upon notice and hearing, the Court may provide relief as follows:

- (1) Restrain any party from committing acts of domestic abuse;
- (2) Exclude the abusing party from the dwelling which parties share or from the residence of the petitioner;
- (3) Award temporary custody or establish temporary visitation with regard to minor children of the parties;
- (4) Establish temporary support for minor children or a spouse;
- (5) Provide counseling or other social services from the abusing party or if there are minor children;
- (6) Order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to the Law Enforcement Agency of the Band, as provided in this chapter.

(b) Any relief granted by the order for protection shall be for a fixed period not to exceed one year.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 50.

### **§ 406. Temporary order**

(a) Where an application under this chapter alleges an immediate and present danger of domestic abuse, the Court may grant an ex parte

temporary order for protection, pending a full hearing, and granting relief as the Court deems proper, including an order:

(1) Restraining any party from committing acts of domestic abuse;

(2) Excluding any party from the dwelling they share or from the residence of the other except by further order of the Court.

(b) An ex parte temporary order for protection shall be effective for a fixed period not to exceed 14 days. A full hearing, as provided by this chapter, shall be set for not later than seven days from the issuance of the temporary order. The respondent shall be served forthwith, a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 51.

### **§ 407. Service of order**

Any order issued under this chapter shall be personally served upon the respondent.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 51.02.

### **§ 408. Assistance of Band Law Enforcement Agency**

When an order is issued under this chapter upon request of the petitioner, the Court shall order the Law Enforcement Agency of the Band to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution or service of the order of protection.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 51.03.

### **§ 409. Effect of leaving household**

A person's right to apply for relief shall not be affected by his or her leaving the residence or household to avoid abuse.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 51.04.

### **§ 410. Security or bond**

The Court shall not require security or bond of any party unless it deems necessary in exceptional cases.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 51.04.

### **§ 411. Modification of order**

Upon application, notice to all parties, and hearing, the Court may modify the terms of an existing order for protection.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 51.05.

### **§ 412. Titles**

Nothing in this chapter shall affect the title to property, real or personal.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 51.06.

### **§ 413. Copy to Law Enforcement Agency**

Upon the request of the petitioner, any order for protection granted pursuant to this chapter shall be forwarded by the Clerk of Court within 24 hours to the Law Enforcement Agency of the Band with jurisdiction over the residence of the applicant.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 51.07.

### **§ 414. Violation of order**

(a) Whenever an order for protection is granted pursuant to this chapter, and the respondent or person to be restrained knows of the order, violation of the order for protection is a misdemeanor pursuant to Band contempt law.

(b) Upon the filing of an affidavit by the petitioner or any Law Enforcement Officer, alleging that the respondent has violated any order for protection granted pursuant to this chapter, the Court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days why he should not be found in contempt of court and punished therefore. The hearing may be held by the District in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 51.09.

### **§ 415. Immunity of Law Enforcement Officers**

A Law Enforcement Officer is not liable for a failure to perform a duty required by 8 MLBSA § 414.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 51.10.

#### **Cross References**

Suits against Band officials and employees, see 24 MLBSA § 701.

## **CHAPTER 7**

### **TERMINATION OF PARENTAL RIGHTS**

#### **Section**

- 501. Procedures for termination.
- 502. Petition.
- 503. Hearing date; continuance.
- 504. Pre-termination report.
- 505. Summons.
- 506. Termination hearing.
- 507. Testimony.
- 508. Grounds for termination.
- 509. Disposition.
- 510. Appealability of termination order.
- 511. Enrollment status or degree of blood quantum.

#### **Cross References**

Minors in need of care, disposition, see 8 MLBSA § 235.

#### **§ 501. Procedures for termination**

Parental rights to a child may be terminated by the Court according to the procedures in this chapter.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 27.

#### **§ 502. Petition**

Proceedings to terminate parental rights shall be instituted by a petition filed by the Solicitor General on behalf of the Band pursuant to 8 MLBSA § 235 or by the parents or guardian of the child. The petition shall state:

- (a) The name, birthdate and residence of the minor.
- (b) The names and residences of the minor's parent, guardian or custodian.
- (c) If the child is in detention or shelter care, the place of detention or shelter care and the time he was taken into custody.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 27.01.

### **§ 503. Hearing date; continuance**

(a) Upon receipt of the petition, the Court shall set a date for the termination hearing which shall be not more than ten days after the Court receives the petition from the Solicitor General.

(b) The hearing may be continued:

(1) Upon motion of the minor's parent, guardian or custodian.

(2) Upon motion of the Solicitor General by reason of the unavailability of material evidence or witnesses and the Court finds the Solicitor General has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 27.02.

### **§ 504. Pre-termination report**

(a) Within two days of receiving the petition, the judge/justice shall order the preparation of a pre-termination report by the Human Resource Officer.

(b) The Human Resource Officer shall consult with the minor's parents and all social services, health, education and other personnel who have had prior professional contacts with the minor and his parent, guardian or custodian, to determine whether termination of parental rights is consistent with the best interests of the child. The Solicitor General may also review any of the minor's previous Court records.

(c) The Human Resource Officer shall prepare a written report containing the professional opinions of all personnel with whom he has consulted. The report shall be presented to the Court at least two days before the termination hearing.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 27.03.

## **§ 505. Summons**

(a) At least five days prior to the termination hearing, the Court shall issue summons to the minor, the minor's parent, guardian or custodian, and any person the Court believes necessary for the proper adjudication of the hearing and any person the minor's parent, guardian or custodian believes necessary for the proper adjudication of the hearing.

(b) The summons shall contain the name of the Court, the title of the proceedings and the date, time and place of the hearing. A copy of the petition shall be attached to the summons.

(c) The summons shall be delivered personally by a law enforcement officer or an appointee of the Court. If the summons cannot be delivered personally, the Court may deliver the summons by registered mail.

(d) If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 27.04.

## **§ 506. Termination hearing**

The Court shall conduct the termination hearing for the sole purpose of determining whether parental rights shall be terminated. The hearing shall be private and closed.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 27.05.

## **§ 507. Testimony**

The Court shall hear testimony concerning the circumstances that gave rise to the petition and the need for termination of parental rights.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 27.051.

## **§ 508. Grounds for termination**

The Court may terminate the parental rights of the parent(s) to his child if it finds evidence beyond a reasonable doubt that:

- (a) The parent has abandoned his child.
- (b) The minor has suffered physical injuries willfully and repeatedly inflicted by his parent(s) upon him which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions.
- (c) The parent(s) have subjected the minor to willful and repeated acts of sexual abuse.
- (d) The voluntary written consent of a parent has been acknowledged before the Court and is accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The Court shall also certify that either the parent or Indian custodian fully understood the explanation in English and that it was interpreted into a language that the parent or Indian custodian understood.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, §§ 27.052 to 27.054.

## **§ 509. Disposition**

- (a) If parental rights to a child are terminated, the Court shall: place the minor with an extended family member; place the minor in a foster care or shelter care facility which has been approved by the Band; and proceed to the adoption chapter (8 MLBSA § 601 et seq.) of this title.
- (b) If parental rights to a child are not terminated, the Court shall make a disposition according to 8 MLBSA § 235.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 27.06.

## **§ 510. Appealability of termination order**

The termination order constitutes a final order for purposes of appeal.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 27.07.

**§511. Enrollment status or degree of blood quantum**

No adjudication of termination of parental rights shall affect the minor's enrollment status as a member of any Band or the minor's degree of blood quantum of any Band.

**Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 27.08.

**CHAPTER 8**

**ADOPTION AND FOSTER CARE**

**Superceded by Chapter 13 (§§ 3101-3241) of this Title**

**CHAPTER 9**

**GUARDIANSHIP AND CONSERVATORSHIP**

**Superceded by Chapter 13 (§§ 3101-3241) of this Title**

**CHAPTER 10**

**CHANGE OF NAME**

**Section**

- 801. Authority of Court.
- 802. Application for change of name.
- 803. Order.
- 804. Records.

## **§ 801. Authority of Court**

The Court of Central Jurisdiction of the Mille Lacs Band of Chippewa Indians, shall have the authority to change the name of any person upon petition of the person or upon the petition of the parents of a minor.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 43.

### **Cross References**

Original jurisdiction of District Court, see 5 MLBSA § 111.

## **§ 802. Application for change of name**

(a) An enrolled member of the Band who shall have resided on lands under jurisdiction of the Band for one year may apply to the Court thereof, to have his name, the names of his minor children, if any, and the name of his spouse, if the spouse joins in the application, changed in the manner herein specified.

(b) They shall state in his application the name and age of his spouse and each of his children, if any, and shall describe all lands in the state in or upon which he, his children and his spouse if their names are also to be changed by this application, claim any interest or lien, and shall appear personally before the Court and prove his identity by at least two witnesses.

(c) If he be a minor the application shall be made by his guardian or next of kin.

(d) Every person who, with intent to defraud, shall make a false statement in any such application shall be guilty of a fraud offense.

(e) No minor child's name may be changed without both of his parents having notice of the pending of the application for change of name, whenever practicable, as determined by the Court.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 43.01.

### **§ 803. Order**

(a) When an application meets the requirements of 8 MLBSA § 802, the Court shall grant the application unless it finds that there is an intent to defraud or mislead or, in the case of the change of a minor child's name, the Court finds that such name change is not in the best interest of the child.

(b) The Court shall set forth in the order the name and age of the spouse and each child of the applicant, if any, and shall state a description of the lands, if any, in which the applicant and his spouse and children, if any, claim to have an interest.

(c) The Clerk shall file such order and record the same in the judgment book. If lands be described therein, a certified copy of the order shall be filed for record by the Clerk with the county recorder of each county wherein any of the same are situated. Before doing so he shall present the same to the county auditor, who shall enter the change of name in his official records and note upon the instrument, over his official signature, the words "change of name recorded."

(d) Any such order shall not be filed, nor any certified copy thereof be issued, until the applicant shall have paid to the Clerk the cost of such record. The fee of the Clerk shall be as provided by law.

(e) No application shall be denied on the basis of the marital status of the applicant.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 43.02.

### **§ 804. Records**

Any order issued by the Court for change of name shall be kept as a permanent record and copies shall be filed with the appropriate Federal or State governmental agencies.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, § 43.

**CHAPTER 11**  
**CHILD CARE**

<b>Subchapter</b>	<b>Section</b>
<b>I. General Provisions</b>	<b>901</b>
<b>II. Child Care Centers</b>	<b>1401</b>
<b>III. Drop-In Child Care Centers</b>	<b>1701</b>

**Historical and Statutory Notes**

The preliminary provisions to Band Statutes 1019-MLC-46 and 9503-MLC-46 provide:

**"ADOPTION OF LICENSE STANDARDS GOVERNING CHILD CARE  
CENTERS BY THE MILLE LACS BAND OF CHIPPEWA**

**"SUBJECT:**

"Adoption of License Standards Governing Child Care Centers, on Chippewa Band Reservations.

**"BACKGROUND**

"The Tribe is a separate sovereign Indian tribe recognized under the laws of the United States and the State of Minnesota. Pursuant to 25 U.S.C. 2701-2721 and Minn. Stat. Section 3.9221, the Tribe has negotiated and entered into a "Tribal-State Compact" (the "Compact") with respect to certain class III gambling. The Tribe wishes to provide child care to the patrons and customers of the Casino.

**"I. PURPOSE**

"The purpose of this bulletin is to inform service providers of the rules and regulations governing child care centers operating on or near Chippewa land.

**"II. AUTHORITY**

"The Tribe has established standards under which an individual, corporation, partnership voluntary association or other organization must be authorized by the band to operate a group child care center on reservation land. The band will adopt and implement laws that govern the child care operation.

**"III. TIMELINES FOR IMPLEMENTATION**

"These laws become effective May 1, 1992."

**Cross References**

Gaming control, see 15 MLBSA § 1 et seq.  
Wage deductions, see 24 MLBSA § 3308.

**SUBCHAPTER I**  
**GENERAL PROVISIONS**

<b>Part</b>	<b>Section</b>
<b>A. Definitions</b>	<b>901</b>
<b>B. Licensing Standards and Procedures</b>	<b>941</b>
<b>C. Facility</b>	<b>971</b>
<b>D. Program</b>	<b>1001</b>
<b>E. Health</b>	<b>1041</b>
<b>F. Nutrition</b>	<b>1071</b>
<b>G. Safety</b>	<b>1101</b>
<b>H. Admissions</b>	<b>1141</b>
<b>I. Administration and Management</b>	<b>1171</b>
<b>J. Staff Requirements</b>	<b>1201</b>
<b>K. Program Operation</b>	<b>1241</b>
<b>L. Insurance</b>	<b>1271</b>
<b>M. Financial Records</b>	<b>1301</b>
<b>N. Day Care Learning Centers Serving Special Needs Children</b>	<b>1341</b>
<b>O. Waiver</b>	<b>1371</b>

**Historical and Statutory Notes**

The enacting clause of Band Statute 1019-MLC-46 provides:

"It is enacted by the Mille Lacs Reservation Business Committee, of the Mille Lacs Band of Chippewa Indians, in order to exercise a more effective form of tribal government to regulate the operation of Child Care Centers."

**Part A**

**Definitions**

**Section**  
901. Definitions.

## § 901. Definitions

The Mille Lacs Reservation Business Committee hereby establishes that the following definition of terms be utilized when interpreting this subchapter.

- (a) "Applicant": Individual[s] who have submitted a signed and dated application form to the agency.
- (b) "Child": Any person who is under the age of ten. Age groupings are:
  - (1) Infant-Birth through 15 months.
  - (2) Toddler-16 months through 36 months.
  - (3) Preschool-37 months through 5 years.
  - (4) School Age-6 years through 10 years.
- (c) "Coordinator": Person responsible for all aspects of the operation of the group-day-care center, [e.g.] administrative duties, staff supervision and training, record keeping, program planning, budgeting, and liaison with local agencies.
- (d) "Day Care": The care of children outside of their home for part of a 24 hour day by persons unrelated to them by blood or marriage.
- (e) "Delegated Staff Division": Referring to the interoffice delegation of duties and responsibilities by Mille Lacs Reservation Business Committee.
- (f) "Facility": Physical environment in which group-day-care takes place.
- (g) "Family Day-Care-Home": [Private home licensed for child care]. Serve only as many children as it can integrate into its own physical setting and pattern of living. A family day-care-home may serve no more than 6 children [3-14 years] in total [no more than 5 when the age range is infancy through 6], including the family-day-care mother's own children. [Federal Requirements].
- (h) "Federal Requirements": Those portions of the standards binding upon the agency but not upon the provider, are so marked. Failure of the agency to meet one or more federal requirements is not a defense for the provider's failure to meet provider requirements.
- (i) "License": The document issued by the R.B.C. authorizing the applicant to provide child care.

(j) "License Capacity": Maximum number of children who can be in attendance at a center at a given time depending upon adult to child ratios as set forth in these standards.

(k) "Mille Lacs Reservation Child Care licensing Committee": A selected group of individuals, with advisory powers only, appointed by the R.B.C. to advise on the implementation on the issuance and enforcement of the Mille Lacs R.B.C. Child Care Ordinance and Child Care Standards.

(l) "Program": A combination of activities that, taken together, constitute the non-physical environment of a center, are part of the program.

(m) "R.B.C.": The Reservation Business Committee (R.B.C.) is the duly elected and federally recognized governing body of the Mille Lacs Reservation. The R.B.C. Is composed of five members: a Chairman, a Secretary/Treasurer, and three District Representatives.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 1.

#### **Cross References**

Reservation Business Committee, legislative authority to be exercised by Band Assembly, see 3 MLBSA § 1.

### **Part B**

#### **Licensing Standards and Procedures**

##### **Section**

- 941. Establishment of standards and procedures.
- 942. Application form.
- 943. Notice of rules and standards.
- 944. Evaluation of application and issuance of license.
- 945. Term and contents of license.
- 946. Provisional license.
- 947. Changes in terms of license.
- 948. Complaints.
- 949. Access to facility for evaluation.
- 950. Notice of closure of group child care center.
- 951. Waiver of regulations.
- 952. Noncompliance.

### **§ 941. Establishment of standards and procedures**

The Mille Lacs Reservation Business Committee hereby establishes that the child care licensing standards and procedures in this Part B be utilized.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 2.

### **§ 942. Application form**

Application for license shall be made on the Application Form issued by the R.B.C. This form shall be obtained from the designated staff division of the Mille Lacs Reservation.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 2.01.

### **§ 943. Notice of rules and standards**

Every Applicant shall be furnished with a copy of these rules and standards.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 2.04.

### **§ 944. Evaluation of application and issuance of license**

(a) The signed and completed application form, including all supporting documentation, shall be evaluated within 30 days based upon these established standards by the Mille Lacs Reservation Child Care Licensing Committee. Based upon the recommendation of this committee, the R.B.C. will determine if a child care license will be issued.

(b) All applicants for a child care license will be reviewed and evaluated by the Mille Lacs Reservation Child Care Licensing Committee. This committee will make a determination in the form of a recommendation to issue an Unconditional license, or issue a Provisional license, or deny the issuance of a license. The recommendation shall be forwarded to the Secretary/Treasurer of the Mille Lacs R.B.C. in writing, signed by the Child Care Chairperson. The R.B.C. shall act on said recommendation no later than its next regular scheduled meeting. Each applicant will be notified within five days in writing by certified Mail, by the Secretary/Treasurer of the Mille Lacs R.B.C., of their decision.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, §§ 2.02, 2.07.

### **§ 945. Term and contents of license**

(a) No child care license may be issued for more than one year. [Federal requirements]. The license shall state the dates of validity, the maximum number of children to be present in the specific program areas, as well as the total program at any one time, the ages, and the hours of operation. The hours must be posted in a conspicuous place on the premises.

(b) Every license shall specify the kind of license and the maximum number of children per section to be provided care at any one time.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, §§ 2.02, 2.08.

### **§ 946. Provisional license**

A provisional license may be issued to all new group child care centers for a designated period. A provisional license may be granted for up to one year to a new group child care center that meets necessary health, safety, and insurance requirements but does not meet all requirements for licensure.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 2.09.

### **§ 947. Changes in terms of license**

Any changes in the terms of the license based on a recommendation of the Child Care Licensing Committee must receive prior approval from the Child Care Licensing Committee and formal approval from the Mille Lacs R.B.C.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 2.03.

## **§ 948. Complaints**

All written complaints shall be addressed to the Program Coordinator. If no satisfaction is found, the complainant may appeal to the Area Administrator. If no satisfaction is found, the complainant may appeal to the Executive Director. If no satisfaction is found, the complainant may appeal to the R.B.C. through the Mille Lacs Reservation Child Care Licensing Committee. The decision of the R.B.C. Is final.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 2.06.

## **§ 949. Access to facility for evaluation**

The Mille Lacs Reservation Child Care Licensing Committee, the Commissioner of Administration, and any applicable area administrator[s], may have access to the child care facility for evaluation at any time during normal working hours and at other times by mutual agreement. For the purpose of investigating any written complaints concerning the health and safety of the children, the above group and/or individual[s] as well as the Mille Lacs R.B.C. Shall have access to the child care facility at any time during a twenty-four hour day. Any complaint concerning a Child Care Facility shall be investigated immediately. [Federal Requirement].

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 2.05.

### **Cross References**

Access by Band, child care centers, see 8 MLBSA § 1602.

## **§ 950. Notice of closure of group child care center**

Notice of the closure of a Group Child Care Center must be sent to the R.B.C. and its license must be returned.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 2.10.

## **§ 951. Waiver of regulations**

Specific regulations may be waived with the advanced written approval of the R.B.C. according to the procedure established for such waiver, provided that the health and safety of the children is assured. The granting of a waiver shall not constitute a precedent for any other child care center. No waiver shall be valid for more than one year.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 2.11.

## **§ 952. Noncompliance**

Failure, or refusal to comply with any aspect of this chapter shall be cause for denial, non-renewal, or revocation of license. Under non-compliance, items the R.B.C. Will notify all funding agencies, state agencies, and local communities stating the cause for denial.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 2.12.

## **Part C**

### **Facility**

#### **Section**

- 971. Requirement that facilities be provided.
- 972. Indian Health Service guidelines.
- 973. Approval of plans.
- 974. Minimum usable space.
- 975. Stairways and corridors.
- 976. Toilets and washbowls.
- 977. Emergency items.
- 978. Heating system.
- 979. Storage of medications and poisonous items.
- 980. Space used by ill children.
- 981. Floors.
- 982. Cleanliness and good repair.
- 983. Cots, cribs and playpens.
- 984. Equipment and furniture.

## **§ 971. Requirement that facilities be provided**

The Mille Lacs Reservation Business Committee hereby establishes that the child care facilities delineated in this Part C be provided.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 3.

### **Cross References**

Child care centers, facilities and equipment, see 8 MLBSA § 1471 et seq.

## **§ 972. Indian Health Service guidelines**

The facility and grounds used by the children must meet the guidelines established by Indian Health Service (I.H.S.). Any and all such standards set by the I.H.S., Shall be designed to protect the requirements of the appropriate safety and sanitation authorities to include the health and safety of all persons who occupy the building.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 3.01.

## **§ 973. Approval of plans**

Prior to construction or renovation of a proposed child care facility the architectural plans must be approved in writing by a designated I.H.S. facility inspector.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46 § 3.02.

## **§ 974. Minimum usable space**

There shall be a minimum of 35 square feet of usable floor space [primary space] per child in attendance, exclusive of hallways, bathrooms, lockers, kitchens, and floor space occupied by stationary equipment, but including equipment and furnishings regularly used by children. [Program flexibility and child movement needs require that adequate space be available].

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 3.03.

### **Cross References**

Child care centers, indoor space, see 8 MLBSA § 1471.

## **§ 975. Stairways and corridors**

All stairways and corridors leading to exits shall be kept clear and free from obstructions at all times.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 3.04.

## **§ 976. Toilets and washbowls**

- (a) Adequate toilet and one washbowl provided in a well ventilated place.
- (b) There must be at least one toilet and one washbowl provided for each 15 children and one additional toilet and washbowl for each additional child or fraction thereof.
- (c) Toilets and washbowls must be adequate, conveniently installed and accessible; properly designated and installed for the appropriate age group.
- (d) Training chairs, instead of the required number of toilets must be provided for toddlers.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 3.05.

### **Cross References**

Cleanliness and sanitation, child care centers, see 8 MLBSA § 1510.

## **§ 977. Emergency items**

A first-aid kit and flashlight shall be available in every day care center for emergency use.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 3.06.

### **Cross References**

Emergency equipment, child care centers, see 8 MLBSA § 1506.  
First-aid kit, child care centers, see 8 MLBSA § 1505.  
First-aid kit, see 8 MLBSA § 1048.  
First-aid training, see 8 MLBSA § 1044.

## **§ 978. Heating system**

The heating system shall be of a size and capacity to maintain a minimum temperature of 68 degrees or a maximum of 72 degrees in all rooms.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 3.07.

### **Cross References**

Child care centers, room temperature, see 8 MLBSA § 1472.

## **§ 979. Storage of medications and poisonous items**

All medications for the children in the Child Care Center shall be kept under lock at all times, those medications which require refrigeration shall be kept in a cooling unit which is secure. All household cleaning supplies and other poisonous items shall be kept in a safe and secure place.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 3.08.

### **Cross References**

Administration of medicine, diapering products, sunscreen lotions and insect repellents, child care centers, see 8 MLBSA § 1511.

Hazardous areas, conditions and objects, child care centers, see 8 MLBSA § 1509.

Medication of children, see 8 MLBSA § 1047.

## **§ 980. Space used by ill children**

Space designated for use by an ill child need not be permanently arranged but shall be:

- (a) Used only for other compatible purposes: (e.g.) private office, library, staff's room or,
- (b) Effectively protected from the main activity area and screening, and,
- (c) Equipped with a child's cot, and,
- (d) At no time shall an ill child be left without supervision.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 3.10.

### **Cross References**

Children who become ill, see 8 MLBSA § 1046.

Children with communicable diseases, see 8 MLBSA § 1045.

Exclusion of sick children, child care centers, see 8 MLBSA § 1512.

## **§981. Floors**

Floors must be kept clean at all times, must not have splinters, cracks, or broken linoleum, and must not be hazardous. Concrete floors shall be tiled, carpeted, or cushioned.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 3.11.

### **Cross References**

Cleanliness and sanitation, child care centers, see 8 MLBSA § 1510.

Hazardous areas, conditions and objects, child care centers, see 8 MLBSA § 1509.

## **§ 982. Cleanliness and good repair**

Premises shall be kept clean and sanitary. The facility and equipment must also be kept in good repair, with no peeling paint, and free from all debris and litter.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 3.12.

### **Cross References**

Cleanliness and sanitation, child care centers, see 8 MLBSA § 1510.

Hazardous areas, conditions and objects, child care centers, see 8 MLBSA § 1509.

Painted surfaces, safety, see 8 MLBSA § 1110.

## **§ 983. Cots, cribs and playpens**

A cot or crib must be provided for each child taking a nap in a program that includes rest. Adequate space and accessibility of exit must be maintained, Infants must be provided with cribs or padded playpens, regardless of type or duration of program. An Indian swing is permissible under these standards.

**Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 3.13.

**§ 984. Equipment and furniture**

All equipment and furniture must be designed for the age group and be substantial, easy to clean, and free from sharp points or corners, splinters, or paint that contains lead.

**Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 3.14.

**Cross References**

Program, equipment and materials, see 8 MLBSA § 1005.  
Safety, furniture, equipment and toys, see 8 MLBSA § 1109.

**Part D**

**Program**

**Section**

- 1001. Program guidelines established.
- 1002. Harmony with life style and cultural experience.
- 1003. Daily schedule.
- 1004. Punishment.
- 1005. Equipment and materials.

**Cross References**

Program, child care centers, see 8 MLBSA § 1571 et seq.

**§ 1001. Program guidelines established**

The Mille Lacs Reservation Business Committee hereby establishes that the program guidelines in this Part D be followed for child care centers.

**Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 4.

## **§ 1002. Harmony with life style and cultural experience**

The program provides experience in harmony with life style and cultural background of the children. The cultural diversity of the children is reflected in the program through incorporation of their languages, food celebrations, lifestyles and child-rearing practices.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 4.01.

## **§ 1003. Daily schedule**

The program daily schedule shall include the following guidelines and instructions:

(a) Each care giver in charge of a group of children must follow written schedules of daily activities which includes time for meals, snacks, sleep, toileting, and indoor/outdoor play, where applicable.

(b) Each facility includes a designated area which a child can sit quietly or lie down to rest. A nap period is provided for children who need it and for children unable to sleep, time and space for rest and quiet play are available.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 4.02.

## **§ 1004. Punishment**

Care givers do not use spanking or other forms of corporal punishment or any other technique which is humiliating, shaming, frightening, or otherwise damaging to the children. Punishment is not associated with food, rest, toilet training or isolation for illness. All facilities should utilize the concept of positive reinforcement.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 4.03.

### **Cross References**

Behavior guidance, child care centers, see 8 MLBSA § 1573.

## **§ 1005. Equipment and materials**

The following guides for equipment and materials should be followed in a child care center:

- (a) The quantity of materials and equipment is sufficient to avoid excessive competition and long waits.
- (b) Materials and equipment are of sufficient quantity to provide for a variety of experiences and appeal at the individuals interest of the children in care.
- (c) Protected areas are provided, free from traffic by children and adults, where equipment and materials can be used with minimal interference.
- (d) Materials are stored in an orderly way, are attractive and accessible to children, and are arranged so that children may select, remove, and replace them either independently or with assistance.
- (e) Furniture is durable and safe, and is child-size or approximately adapted for children's ages.
- (f) Non-durable consumable equipment such as books, games, or materials and other easily breakable or lost education or recreation equipment must be replaced as needed through the programs operation year.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 4.04.

### **Cross References**

Facility, equipment and furniture, see 8 MLBSA § 984.  
Safety, furniture, equipment and toys, see 8 MLBSA § 1109.

## **Part E**

### **Health**

#### **Section**

- 1041. Health guidelines established.
- 1042. Health responsibilities.
- 1043. Information obtained from parents.
- 1044. First-aid training.
- 1045. Children with communicable diseases.
- 1046. Children who become ill.

- 1047. Medication.
- 1048. First-aid kit.

#### **Cross References**

Child care centers, health and safety, see 8 MLBSA § 1501 et seq.  
Information and instruction from parents, see 8 MLBSA § 1143.

### **§ 1041. Health guidelines established**

The Mille Lacs Reservation Business Committee hereby establishes the health guidelines in this Part E to be followed for child care centers.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 5.

### **§ 1042. Health responsibilities**

The director, or designated personnel, of each program shall be responsible for observation of health and development of children, handling illness at the center, accident prevention and emergency procedures, and keeping health records complete.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 5.01.

### **§ 1043. Information obtained from parents**

Written evidence will be obtained from each parent of the following information:

- (a) Emergency contact information on each child, including written permission for each child to receive emergency treatment.
- (b) Proof of immunizations appropriate for the child's age.
- (c) Any prescriptions or medications which the child is currently taking.
- (d) Tuberculosis testing results which have been completed within six (6) months.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 5.02.

### **§ 1044. First-aid training**

All staff personnel are required to possess or participate in no less than ten (10) hours of first-aid training conducted by a certified individual.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 5.03.

#### **Cross References**

Safety, see 8 MLBSA § 1101 et seq.

### **§ 1045. Children with communicable diseases**

Children with communicable diseases are to be kept at home. Such children must have written permission from their doctor to return to the program.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 5.04.

#### **Cross References**

Exclusion of sick children, child care centers, see 8 MLBSA § 1512.

### **§ 1046. Children who become ill**

Child care centers must provide care for a child who becomes ill. Supervision must be provided until the child is picked up by the authorized person[s].

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 3.09.

#### **Cross References**

Exclusion of sick children, see 8 MLBSA § 1512.

Space used by ill children, see 8 MLBSA § 980.

### **§ 1047. Medication**

When a child is to be given oral or surface medication, written instructions by a physician or dentist must be provided and written authorization to administer medication must be

given by parent. Medication must be labeled, stored under lock and/or out of reach of children.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 5.05.

#### **Cross References**

Administration of medicine, child care centers, see 8 MLBSA § 1511.

Storage of medications, see 8 MLBSA § 979.

### **§ 1048. First-aid kit**

A ten-unit first-aid kit and directions for its use must be available.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 5.06.

#### **Cross References**

Child care centers, first aid kit, see 8 MLBSA § 1505.

Emergency items, see 8 MLBSA § 977.

## **Part F**

### **Nutrition**

#### **Section**

1071. Nutrition guidelines established.

1072. Meals and snacks.

1073. Sanitary food-handling.

1074. Diet of infant.

1075. Drinking water.

1076. Staff to eat with children.

1077. Nutritionist.

### **§ 1071. Nutrition guidelines established**

The Mille Lacs Reservation Business Committee hereby establishes that the nutrition guidelines in this Part F be followed for child care centers.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 6.

## **§ 1072. Meals and snacks**

All group child care centers must provide or ensure the availability of adequate and nutritious meals and snacks appropriate for the ages and needs of the children served. Each regular meal and two snacks or two meals and one snack shall be provided daily for each child in care five through eight hours.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 6.01.

### **Cross References**

Availability of meals and snacks, child care centers, see 8 MLBSA § 1541.

## **§ 1073. Sanitary food-handling**

All group child care center personnel shall understand sanitation and methods of handling, preparing, and serving food in a safe and sanitary manner.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 6.02.

### **Cross References**

Sanitation, food, child care centers, see 8 MLBSA § 1545.

## **§ 1074. Diet of infant**

The diet of an infant shall be determined by the child's parents, along with written diet instructions.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 6.03.

### **Cross References**

Infant diets, child care centers, see 8 MLBSA § 1544.  
Information and instruction from parents, see 8 MLBSA § 1143.

## **§ 1075. Drinking water**

Drinking water shall be freely available to all children regardless of age. Each child shall be provided with an individual drinking container.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 6.04.

## **§1076. Staff to eat with children**

All meals and snacks shall be served family style. Staff personnel are therefore required to eat with the children.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 6.05.

### **Cross References**

Staff to sit with children at meals or snacks, child care centers, see 8 MLBSA § 1542.

## **§ 1077. Nutritionist**

All meals and snacks shall be critiqued and approved by a licensed nutritionist and posted in a conspicuous place for potential information.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 6.06.

## **Part G**

### **Safety**

#### **Section**

- 1101. Emergency or accident procedures.
- 1102. Fire extinguishers.
- 1103. Electrical outlets.
- 1104. Telephones.
- 1105. Emergency telephone numbers.
- 1106. Hot surfaces.
- 1107. Hazardous materials and tools.
- 1108. Exterior spaces.

1109. Furniture, equipment and toys.  
1110. Painted surfaces.

**Cross References.**

Child care centers, health and safety, see 8 MLBSA §1501 et seq.  
First-aid training, see 8 MLBSA § 1044.

**§ 1101. Emergency or accident procedures**

A center shall establish procedures to be followed in case of emergencies or accidents.

**Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 7.

**§ 1102. Fire extinguishers**

A center must be equipped with the number of fire extinguishers determined by the designated Reservation Business Committee facility inspector. Extinguishers must be in working order and checked annually.

**Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 7.01.

**Cross References**

Child care centers, fire extinguisher inspections, see 8 MLBSA § 1508.

**§ 1103. Electrical outlets**

All electrical outlets must be covered or protected when not in use.

**Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 7.02.

**Cross References**

Hazardous areas, conditions and objects, child care centers, see 8 MLBSA § 1509.

## **§ 1104. Telephones**

Every facility must have a phone that is readily accessible.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 7.03.

### **Cross References**

Child care centers, telephone, see 8 MLBSA § 1507.

## **§ 1105. Emergency telephone numbers**

A list of emergency numbers shall be prominently posted by the telephone: police, fire, doctor, ambulance, and hospital.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 7.04.

### **Cross References**

Child care centers, posted telephone numbers, see 8 MLBSA § 1507.

## **§ 1106. Hot surfaces**

Radiators, fireplaces, hot pipes, steam radiators, and other hot surfaces shall be protected by guards.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 7.05.

### **Cross References**

Hazardous areas, conditions and objects, child care centers, see 8 MLBSA § 1509.

## **§ 1107. Hazardous materials and tools**

Sharp scissors, knives, matches, and other potential hazards to children shall be stored out of their reach. The use of potentially hazardous materials and tools by children shall be supervised.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 7.06.

### **§ 1108. Exterior spaces**

Exterior spaces are fenced or have natural barriers to restrict children from unsafe areas.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 7.07.

### **§ 1109. Furniture, equipment and toys**

Furniture, equipment, and toys are appropriate to the ages and developmental needs of the children, are sturdily constructed without sharp edges, and prevent minimal hazards to children.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 7.08.

#### **Cross References**

Facility, equipment and furniture, see 8 MLBSA § 984.  
Hazardous areas, conditions and objects, child care centers, see 8 MLBSA § 1509.  
Program, equipment and materials, see 8 MLBSA § 1005.

### **§ 1110. Painted surfaces**

All painted surfaces accessible to children are free of toxic materials.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 7.09.

#### **Cross References**

Peeling paint, see 8 MLBSA § 982.

## **Part H**

### **Admissions**

#### **Section**

- 1141. Admissions guidelines and policies established.
- 1142. Age ranges.
- 1143. Information and instruction from parents.
- 1144. Communication between family and facility.

#### **Cross References**

Sample menus provided at time of admission, child care centers, see 8 MLBSA § 1543.

### **§1141. Admissions guidelines and policies established**

The Mille Lacs Reservation Business Committee hereby establishes the admissions guidelines and policies for child care in this Part H.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 8.

### **§ 1142. Age ranges**

Each group child care program shall have an admission policy that specifies the age ranges of children being served.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 8.01.

### **§ 1143. Information and instruction from parents**

(a) Admission procedures developed must provide the care-giver with sufficient information and instruction from the parent to enable the caregiver to make decisions or act in behalf of the child's welfare in the absence of the parent.

(b) Prior to admission of the child, the caregiver shall obtain written information from a person or persons legally responsible for the child covering the following items:

- (1) The child's full name, birth date, and current address.

(2) The name and address of the parent or parents, or the person(s) legally responsible for the child. Telephone number of instructions as to how the parent(s) responsible for the child may be reached when child is in the day care program.

(3) Names of persons authorized to take the child from the day care facility and their address, and persons not so authorized.

(4) Names, address, and telephone numbers of the health source to be called in case of emergency. Health statement and immunization data as specified in 8 MLBSA § 1041 et seq.

(5) Name, addresses, and telephone numbers of parent(s) who can assume responsibility for the child if the parent cannot be reached in an emergency.

(6) Signed authorization to the effect that the parent gives permission to the center to act in an emergency situation when the parent cannot be reached or is delayed in arriving. (In Loco Parentis.)

(7) Written permission for participation in specific research, experimentation or publicity activities.

(8) All children must have the expressed written permission from their parent or guardian to participate in activities away from the physical facility of the Child Care Center. Sponsorship of the activity shall not be considered a reason to waive this requirement. All written permissions shall be activity specific and must include the type of activity, location, date and time of departure and anticipated arrival. Blanket permission shall not be allowed.

(9) Special diet needs shall be followed as stated in the following sections.

(10) Written statement of income provided by parents, [Federal Requirement] Reason: Any child care center receiving Federal Funds must abide by income guidelines for families to be eligible for services.

(c) All information received during admission eligibility process is and must remain confidential.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 8.02, 8.03.

### **Cross References**

Diet of infant, see 8 MLBSA § 1074.

## **§ 1144. Communication between family and facility**

Admission policies and procedures must ensure initial and continuing communication between the family and the facility to ensure compatibility in their mutual responsibility for the child's welfare.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 8.0392.

### **Cross References**

Participation in field trips, child care centers, see 8 MLBSA § 1572.

## **Part I**

### **Administration and Management**

#### **Section**

1171. Administration and management established.

1172. Information to be submitted to licensing committee.

1173. Program Coordinator.

1174. Hiring policies: personnel policies of Mille Lacs Reservation Business Committee.

## **§ 1171. Administration and management established**

The Mille Lacs Reservation Business Committee hereby establishes the administration and management for child care centers.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 9.

### **§ 1172. Information to be submitted to licensing committee**

Every child program shall submit administrative and management information to the licensing committee. Along with the application for licensure, the information must include:

- (a) Admission procedures and requirements.
- (b) Required information to be kept in each child's confidential record.
- (c) Individualized Educational Program Plan.
- (d) Description of provisions for emergency medical and/or dental care.
- (e) Written documentation on insurance coverage in an amount sufficient to protect the interest of the children and staff.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 9.01.

### **§ 1173. Program Coordinator**

Every child care center shall have a Program Coordinator who shall be responsible and accountable for meeting the requirements of this subchapter.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 9.02.

### **§ 1174. Hiring policies: personnel policies of Mille Lacs Reservation Business Committee**

All child care centers licensed by the Mille Lacs Reservation Business Committee:

- (a) Will not discriminate because of political or religious opinions or affiliations, or because of race, national origin or other non-merit factors except for Indian preference or as required by specific program guidelines. Discrimination on the basis of age, sex or physical disability will be Prohibited except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration.

(b) Will take affirmative action to insure that these provisions are carried out.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 9.03.

### **Part J**

#### **Staff Requirements**

##### **Section**

- 1201. Staff requirements established.
- 1202. Staff development training.
- 1203. Job descriptions.
- 1204. Staff-to-child ratios.
- 1205. Persons capable of training staff.
- 1206. Competence and health of personnel.
- 1207. Abuse or neglect of children.
- 1208. Duty to report abuse or neglect.

#### **Cross References**

Child care centers, qualifications and training of applicant and staff, see 8 MLBSA § 1441 et seq.

### **§ 1201. Staff requirements established**

The Mille Lacs Reservation Business Committee hereby establishes, in this Part J, the staff requirements for child care centers.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 10.

### **§ 1202. Staff development training**

Staff development training for all regular administrative, teaching and support services staff members, including volunteers, must be a part of every center's educational program.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 10.01.

**§ 1203. Job descriptions**

The program shall maintain up-to-date job descriptions for all staff which include mandatory staff training participation as an aspect of career development.

**Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 10.02.

**§ 1204. Staff-to-child ratios**

(a) The following staffing ratios shall apply with these specific age groups.

Children of age:	6 weeks-16 months	1 adult to 2 children
	17-33 months	1 adult to 7 children
	34 months-5 years	1 adult to 10 children
	6-12 years	1 adult to 15 children

(b) The adult-child ratio must be maintained throughout the day. This ratio is based solely on the number of teacher aides in the classroom compared to the total number of children. Children shall not be left unattended for any reason.

(c) Volunteers for all age groupings: to be counted in the staff-to-child ratio, volunteers must be at least 18 years of age and participate in an orientation to the program.

**Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, §§ 10.03, 10.05, 10.06.

**§ 1205. Persons capable of training staff**

At least one person on the staff must be knowledgeable of the following fields and capable of training adult staff: Early childhood education, growth, development and practices; and first-aid and home nursing.

**Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 10.04.

## **§ 1206. Competence and health of personnel**

All personnel in regular contact with children, including volunteers and drivers, shall be physically, mentally, and emotionally competent to care for children and free from serious communicable disease, with tuberculosis testing results which have been completed within the last six (6) months. Such testing shall occur once every calendar year.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 10.07.

### **Cross References**

Child care centers, general staff qualifications, see 8 MLBSA § 1443.

## **§ 1207. Abuse or neglect of children**

(a)(1) Employees of any child care center licensed by the Mille Lacs Reservation Business Committee are Prohibited from abusing and/or neglecting, of any type or kind, and to any degree which could tenably be construed as such by an impartial observer, any child placed under their direct/indirect supervision at a Child Care Center.

(2) Any employee suspected of such actions shall be immediately suspended from further duty upon the program coordinator's receipt of a written statement of complaint which alleges the occurrence of such actions. Such written statements must include:

(A) Name of employee allegedly committing said infraction;

(B) Time and location of observed infraction;

(C) Exact eye-witness description of what actually occurred: must be factual information-hearsay information is not allowable; and

(D) Name, date and signature of person filing the report.

(3) Upon receipt of said written complaint, the program coordinator shall forward said statement, unduplicated, to the Executive Director. The Executive Director shall notify the Reservation Business Committee of said complaint at a special closed meeting. The Reservation Business Committee shall establish a three (3) member investigative hearing panel chaired by the Executive Director whose purpose shall be to only gather the facts about the alleged incident and submit a written report to the Secretary-Treasurer of the R.B.C. within five (5) days after their establishment. At a special closed Reservation Business Committee meeting, the R.B.C. Shall hear all the evidence regarding the incident and render a decision in writing regarding said incident. The decision of the R.B.C. Shall be final.

(b) The prevailing rule of law regarding such allegations shall be that an employee is innocent until proven guilty based upon a collection of facts or a substantial amount of circumstantial evidence.

(c) An accused employee shall have the right to present evidence on his/her behalf to the investigative panel. He/she shall also have the right to appoint another person to represent his/her interests at said hearing. He/she shall have the right to cross examine any witness who testifies at said hearing. These rights shall constitute an employee's rights to due process.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 10.09.

#### **Cross References**

Confrontation of witnesses and assistance of counsel, see 1 MLBSA § 6.

Domestic abuse prevention, see 8 MLBSA § 401 et seq.

Due process, see 1 MLBSA § 8.

Duty to report abuse and neglect, see 8 MLBSA § 301 et seq.

Minors in need of care, see 8 MLBSA § 201 et seq.

### **§ 1208. Duty to report abuse or neglect**

It is the policy of the Mille Lacs Reservation Business Committee to require all personnel of any child care center under its jurisdiction to report any suspected physical and/or sexual abuse of children or physical/psychological neglect of children. Said written report shall be prepared by the program coordinator addressed to the Health/welfare Area Administrator. Said administrator shall immediately forward this letter to the Executive Director who shall in turn inform the Reservation Business Committee. The Reservation

Business Committee shall, at a closed special meeting, cause to happen any appropriate action it deems necessary to resolve a complaint of this kind.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 10.08.

#### **Cross References**

Duty to report abuse and neglect, see 8 MLBSA § 301 et seq.

### **Part K**

#### **Program Operation**

##### **Section**

1241. Program operation guidelines established.

1242. Records.

1243. Informational documents.

#### **§ 1241. Program operation guidelines established**

The Mille Lacs Reservation Business Committee hereby establishes that child care center programs be operated as provided in this Part K.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 11.

#### **§ 1242. Records**

(a) The center shall maintain the following types of records:

- (1) Daily attendance records of children,
- (2) Employment of staff and their evaluations,
- (3) Health records of children and staff,
- (4) Financial records,
- (5) Insurance, and
- (6) Vehicle registration and proof of maintenance

(b) Also records of permission from parents for children for emergency treatment, field trips, special medications, arrangement for picking up children from the center other than parents, approval of architectural plans for renovation plans from a health agency in the community, records of volunteers time and health status, and an annual inventory of all equipment shall be maintained.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 11.01.

#### **Cross References**

Records, child care centers, see 8 MLBSA § 1671 et seq.

### **§ 1243. Informational documents**

The program coordinator shall assure the following written documents:

- (a) A clear definition of the type of service being offered to the children and their parents,
- (b) Hours of operation,
- (c) Written admissions and enrollment procedures,
- (d) A clearly outlined list of fees and a plan for payment which is given to an interested inquirer on request,
- (e) Regulations covering the belongings of children,
- (f) Transportation arrangements.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 11.02.

### **Part L**

#### **Insurance**

##### **Section**

1271 . Insurance of facility and vehicles.

## **§ 1271. Insurance of facility and vehicles**

The program Coordinator shall assure the following types of insurance: the center facility, and any vehicle owned or operated by the center or its staff, shall have full comprehensive insurance coverage.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 12.

## **Part M**

### **Financial Records**

#### **Section**

1301. Financial records to be maintained.

1302. Income and expenditures.

1303. Fees.

1304. Purchase and inventory policies.

1305. Budget.

## **§ 1301. Financial records to be maintained**

The Mille Lacs Reservation Business Committee hereby establishes that the financial records provided for by this Part M be maintained.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 13.

## **§ 1302. Income and expenditures**

The center shall maintain a record of all income regardless of its derivation and record all expenditures.

### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 13.01.

## **§ 1303. Fees**

Records shall be kept of all fees obtained from parents, and of their disbursement.

**Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 13.02.

**§ 1304. Purchase and inventory policies**

The Program Coordinator shall have written policies covering the purchases of the organization and the maintenance of an inventory of the center's equipment.

**Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 13.03.

**§ 1305. Budget**

The Program Coordinator shall maintain an annual budget which shall provide information on the following areas of itemization:

- (a) Staff salaries and fringe benefits,
- (b) Equipment purchase or rental,
- (c) Insurance costs,
- (d) Office or space costs,
- (e) Consumable supplies,
- (f) Communications,
- (g) Other direct costs,
- (h) Travel for staff,
- (i) Consultants,
- (j) Training, and
- (k) Food costs.

**Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 13.04.

**Part N**

**Day Care Learning Centers Serving Special Needs Children**

**Section**

- 1341. Integration of handicapped children.
- 1342. Consultant.
- 1343. Obtainment of information about special problems or needs.
- 1344. Progress evaluations.

**§ 1341. Integration of handicapped children**

Day care learning centers are encouraged to integrate handicapped children into the group of normal children whenever feasible for the center and for the child. The special needs of the child must be met.

**Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 14.

**§ 1342. Consultant**

- (a) The day care learning center shall obtain the assistance of a qualified consultant prior to the enrollment of any special needs child.
- (b) The center shall have written program modifications based on the determination of the qualified consultant and the needs of the individual special needs child. These program modifications shall be understood by the program staff.
- (c) Additional staff as recommended by the consultant shall be available.
- (d) Modified equipment and supplies as recommended by the consultant shall be available.
- (e) Training of all staff as recommended by the consultant shall be arranged.
- (f) Modification of the physical facilities shall be made as recommended by the consultant and approved by the R.B.C. Facility inspector.

**Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 14.01.

### **§ 1343. Obtainment of information about special problems or needs**

Prior to the admission of any special needs child, the day care center shall obtain information from the parents, the physician and the state and local education agency about any special problems or needs that may affect the child's use of the program. Where indicated, a psychological evaluation may be made if necessary, and must be made available to the center.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 14.02.

### **§ 1344. Progress evaluations**

The progress of the special needs child shall be evaluated no less than annually by a qualified consultant.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1019-MLC-46, § 14.03.

## **Part O**

### **Waiver**

#### **Section**

1371. Waiver.

### **§ 1371. Waiver**

Upon the simple majority vote of the Reservation Business Committee, any word, sentence, paragraph or section of these standards may be waived for up to twelve months provided there is no loss to the quality of the program offered to its participants. All requests must be initiated in writing to the Mille Lacs Reservation Child Care Licensing Committee by the Program Coordinator. Upon receipt, a public hearing must be held no later than five (5) days hence. The committee will deliberate and finalize a recommendation on said request to be forwarded to the Secretary-Treasurer of the R.B.C. The R.B.C. Shall hear the recommendation and supporting documentation at its next regularly scheduled meeting and deliberate on a final determination. The decision of the R.B.C. Shall be final.

**Historical and Statutory Notes**

Source: Band Statute 1019-MLC-46, § 1.14.

**SUBCHAPTER II  
CHILD CARE CENTERS**

<b>Part</b>	<b>Section</b>
<b>A. General Provisions</b>	<b>1401</b>
<b>B. Qualifications and Training of Applicant and Staff</b>	<b>1441</b>
<b>C. Facilities and Equipment</b>	<b>1471</b>
<b>D. Health and Safety</b>	<b>1501</b>
<b>E. Food</b>	<b>1541</b>
<b>F. Program</b>	<b>1571</b>
<b>G. Access</b>	<b>1601</b>
<b>H. Transportation</b>	<b>1641</b>
<b>I. Records</b>	<b>1671</b>

**Part A**

**General Provisions**

**Section**

1401. Definitions.

1402. Applicability.

1403. Information on organizations.

**§ 1401. Definitions**

(a) **Scope.** The definitions in this section apply to this subchapter.

(b) **Age category.** "Age category" means the designation given a child according to the child's age. The age categories are as follows:

(1) "Infant" means a child who is at least six weeks old but less than 16 months old.

(2) "Toddler" means a child at least 16 months old but less than 33 months old.

(3) "Preschooler" means a child who is at least 33 months old but who has not yet attended the first day of kindergarten.

(4) "School age child" means a child who has at least attended the first day of kindergarten but is less than 13 years old.

(c) **Applicant.** "Applicant" means a person, corporation, partnership or voluntary association, applying to provide reservation child care.

(d) **Band building code.** "Band building code" means those codes and regulations adopted by the Tribe.

(e) **Building official.** "Building official" means a person appointed by the Band to administer the building codes. The term includes the appointee's authorized representative.

(f) **Center.** "Center" means a facility in which a child care program is operated.

(g) **Child.** "Child" means a person 12 years old or younger.

(h) **Child care program.** "Child care program" means the systematic organization or arrangement of activities, personnel, materials, and equipment in a facility to promote the physical, intellectual, social, and emotional development of a child in the absence of the parent for a period of less than 24 hours a day.

(i) **Child care program plan.** "Child care program plan" means the written document that states the specific activities that will be provided by the license holder to promote the physical, intellectual, social, and emotional development of the children enrolled in the center.

(j) **Clean.** "Clean" means free from dirt.

(k) **Supervision.** "Supervision" occurs when a program staff person is within sight and hearing of a child at all times so that the program staff person can intervene to protect the health and safety of the child.

(l) **Variance.** "Variance" means time limited written permission by the Tribe for an applicant or license holder to depart from the provisions of

this subchapter if equivalent alternative measures are taken to ensure the health, safety, and rights of the children in care.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 1.

### **§ 1402. Applicability**

This subchapter governs the licensure of the applicants for and license holders operating a child care program in a center.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 2.

### **§ 1403. Information on organizations**

If the applicant is an authorized representative of a partnership, corporation, voluntary association, or other organization legally responsible for the operation of the child care program, the applicant must make available and maintain the names and addresses of the owners and board members, the articles of incorporation, and an organizational chart in the center administrative record.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 3.02.

## **Part B**

### **Qualifications and Training of Applicant and Staff**

#### **Section**

- 1441. Definitions.
- 1442. Applicant background study.
- 1443. General staff qualifications.
- 1444. Disqualification factors.
- 1445. Directors; general requirements.
- 1446. Teacher qualifications.
- 1447. Assistant teacher qualifications.
- 1448. Aide qualifications.
- 1449. Orientation training.
- 1450. First aid training.
- 1451. Cardiopulmonary resuscitation (CPR) training.
- 1452. In-service training.

## Historical and Statutory Notes

The title of Band Ordinance 30-09 is “An Ordinance amending 8 MLBSA § 1446 entitled Teacher Qualifications, § 1447 entitled Assistant Teacher Qualifications and § 1448 entitled Aide Qualifications, Subchapter III<sup>1</sup>] of Title 8 regulating Child Care Centers located on Band lands for the purpose of updating and strengthening the requirements to ensure the safety of children in the Band’s care.”

The preamble of Band Ordinance 30-09 provides: “It is enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Ojibwe for the purpose of amending the requirements for Teachers, Assistant Teachers and Aides working in Child Care Centers located on Band lands in order to provide a safe place for Mille Lacs Band children and other children who may be under the care of the Band in its child care centers. The Band Assembly recognizes that this amendment is necessary as the date of the enacting Band statute was May 1, 1992 and many changes have occurred since that date.

## Cross References

Child care, staff requirements, see 8 MLBSA § 1201 et seq.  
Personnel records, see 8 MLBSA § 1672.

## § 1441. Definitions

- (a) "Accredited course" means a course that is offered for credit by or through an accredited post-secondary institution.
- (b) "Education" means accredited course work from an accredited post-secondary institution in child development; children with special needs; early childhood education methods of theory; curriculum planning; child study techniques; family studies; child psychology; parent involvement; behavior guidance; child nutrition; child health and safety; early childhood special education methods of theory; child abuse and neglect prevention; recreational sports, arts, and crafts methods of theory; or coordination of community and school activities.
- (c) "Experience" means paid or unpaid employment serving children as a teacher, assistant teacher, or aide, in a licensed child care center, or work as a student intern in a licensed center, a school operated by the commissioner of education or by a legally constituted local school board, or a private school.
- (d) "Staff supervision" means responsibility to hire, train, assign duties, and direct staff in day to day activities and evaluate staff performance. A "supervisor" is a person with staff supervision responsibility.
- (e) "Student intern" means a student of a post-secondary institution assigned by that institution for a supervised experience with children. The

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<sup>1</sup> So in original. Probably should be Subchapter II of Chapter 11.

experience must be in a licensed center, and elementary school operated by the commissioner of education or a legally constituted local school board, or a private school approved under rules administered by the commissioner of education. The term includes a person who has practiced teaching, student teaching, or carrying out a practicum or internship.

**Historical and Statutory Notes**

**Source:** Band Statute 9305-MLC-46 § 4.01.

**§ 1442. Applicant background study**

An applicant background study of the applicant and all staff persons who will have direct contact with or access to persons served by the child care program.

**Historical and Statutory Notes**

**Source:** Band Statute 9305-MLC-46, § 3.01.

**§ 1443. General staff qualifications**

Staff persons who have direct contact with or access to children, and volunteers who have direct contact with or access to children and are not under the direct supervision of a staff person, must meet the qualifications in this section:

(a) Persons who supervise staff persons or volunteers must be at least 18 years old.

(b) Staff persons must be physically able to care for children and must not present a risk of transmission of reportable communicable disease.

**Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 4.02.

**Cross References**

Child care staff, competence and health, see 8 MLBSA § 1206

**§ 1444. Disqualification factors**

A staff person with direct contact with or access to children in care must disclose the arrest, conviction, and applicant background information if that staff person:

(a) has a conviction of, has admitted to, has been charged and is awaiting trial, for or there is substantial evidence indicating that the person has committed an act of physical abuse or sexual abuse;

(b) has a conviction of, has admitted to, has an adjudication of delinquency for, has been charged and is awaiting trial for, or a preponderance of the evidence indicates the person has committed:

(1) neglect;

(2) a felony;

(3) the same or similar crimes as those in this subsection listed in the laws of another state or of the United States or of another country;

(c) has mental illness as defined in Minnesota Statutes, section 245.462, subdivision 20, and the behavior has or may have a negative effect on the ability of the person to provide child care or is apparent during the hours children are in care; or

(d) abuses prescription drugs or uses controlled substances, as named in Minnesota Statutes, chapter 152, or alcohol to the extent that the use or abuse impairs or may impair the person's ability to provide child care or is apparent during the hours children are in care.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46. § 4.03.

### **§ 1445. Directors; general requirements**

A director must:

(a) be at least 18 years old;

(b) be a graduate of a high school or hold an equivalent diploma attained through successful completion of the general education development (GED) test;

(c) have at least 1,040 hours of paid or unpaid staff supervision experience; and

(d) have at least nine quarter credits or 90 hours earned in any combination of accredited courses in staff supervision, human relations, and child development.

**Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 5.

**§ 1446. Teacher qualifications**

**(a) Teacher qualifications, general.** A teacher must be at least 18 years old and meet the qualifications in subsection (b) with the following exceptions:

(1) A registered nurse or licensed practical nurse is qualified as a teacher for infants only.

(2) A registered nurse may be used to meet the staff-to-child ratios for a teacher for sick care in a center licensed to operate a sick care program.

**(b) Teacher education and experience requirements.** A teacher with the credential listed in column A must have the education and experience listed in column B.

Column A

Column B

(1) A high school or General Education Development (GED) diploma	Experience: 4,160 hours as assistant teacher Education: 24 quarter credits
(2) Diploma from Association Montessori Internationale; preprimary credential, primary diploma, or provisional certificate from the American Montessori Society, without a baccalaureate degree	Experience: 2,080 hours as assistant teacher, aide, or student intern Education: 12 quarter credits
(3) Preprimary credential, primary diploma, or provisional certificate from the American Montessori Society; or diploma from the Association Montessori Internationale with a baccalaureate degree	Experience: 1,040 hours as assistant teacher, aide, or student intern Education: no additional required
(4) Minnesota technical institute certificate as a Child Development Assistant	Experience: 2,080 hours as an assistant teacher Education: 6 quarter credits
(5) Child Development Associate credential (center based or family day care) for preschool or for infants and toddlers from the Council for Early Childhood Professional Recognition	Experience: 1,560 hours as assistant teacher, aide, or student intern Education: no additional required

(6) License from the Minnesota Department of Education for Pre-kindergarten Associate; or a certificate or credential for a two-year program from an accredited community college or technical college in child development or early childhood education	Experience: 1,040 hours as assistant teacher, aide, or student intern Education: 6 quarter credits
(7) Baccalaureate degree from an accredited college or university in any field	Experience: 1,040 hours as assistant teacher, aide, or student intern Education: 18 quarter credits
(8) License from the Minnesota Department of Education for elementary education without kindergarten endorsement	Experience: 520 hours as assistant teacher, aide, or student intern if teaching children under school age Education: 6 quarter credits within one year of initial employment if teaching children under school age
(9) License from the Minnesota Department of Education for pre-kindergarten/nursery, or a license from the Minnesota Department of Education for elementary education with a kindergarten endorsement	Experience: no additional required Education: no additional required

**Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 6; Band Ordinance 30-09, § 1

**§ 1447. Assistant teacher qualifications**

(a) **Assistant teacher qualifications, general.** An assistant teacher must work under the supervision of a teacher. An assistant teacher must be at least 18 years old and meet the qualifications in subsection (b) with the following exceptions:

(1) A registered nurse or licensed practical nurse is qualified as an assistant teacher for infants only.

(2) A registered nurse may be used to meet the staff-to-child ratios for an assistant teacher for sick care in a center licensed to operate a sick care program.

(b) **Assistant teacher education and experience requirements.** An assistant teacher with the credential listed in column A must have the education and experience listed in column B.

Column A

Column B

(1) A high school or General Education	Experience: 2,080 hours as an aide or
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Development (GED) equivalency	student intern Education: 12 quarter credits
(2) Minnesota license as a family day care or group family day care provider	Experience: 2,080 hours as a licensed family day care or group family day care provider Education: 12 quarter credits
(3) Diploma from Association Montessori Internationale or preprimary credential, primary diploma, or provisional certificate from the American Montessori Society	Experience: 520 hours as an aide or student intern Education: 3 quarter credits
(4) Minnesota technical institute certificate as a Child Development Assistant	Experience: 520 hours as an aide or student intern Education: no additional required
(5) Two years full-time postsecondary education from a college or university	Experience: 1,040 hours as an aide or student intern Education: 9 quarter credits
(6) Child Development Associate credential, center based or for family day care, from the Council for Early Childhood Professional Recognition	Experience: no additional required Education: no additional required
(7) Baccalaureate degree in any field from an accredited college or university	Experience: no additional required Education: 9 quarter credits
(8) Certificate or credential for a two year program in child development or early childhood education at a Minnesota community college or technical college	Experience: no additional required Education: no additional required
(9) License from the Minnesota Department of Children, Families, and Learning for Pre-kindergarten Associate	Experience: no additional required Education: no additional required

#### Historical and Statutory Notes

**Source:** Band Statute 9503-MLC-46, § 7; Band Ordinance 30-09, § 2

#### § 1448. Aide qualifications

(a) **Aides /Qualifications.** In this subsection, “aide” means a staff person who carries out child care program activities under the supervision of a teacher or assistant teacher. An aide who is under 18 years old must be directly supervised by a teacher or assistant teacher at all times except when the aide is assisting with the supervision of sleeping children or assisting children with washing, toileting, and diapering. An aide must be at least 16 years old.

(b) **Experienced aide qualifications, general.** An individual employed as an aide at a child care center may work with children without being directly supervised for

an amount of time that does not exceed 25 percent of the child care center's daily hours if:

(1) a teacher is in the facility;

(2) the individual has received within the last three years first aid training that meets the requirements under § 1450 of Subchapter II<sup>2</sup> of this Title, and CPR training that meets the requirements under § 1451 of Subchapter II<sup>3</sup> of this Title;

(3) the individual is at least 20 years old; and

(4) the individual has at least **4,160** hours of child care experience as a staff member in a licensed child care center or as the license holder of a family day care home, 120 days of which must be in the employment of the current company.

(c) A child care center that uses experienced aides under this subdivision must notify parents or guardians by posting the notification in each classroom that uses experienced aides, identifying which staff member is the experienced aide. Records of experienced aide usage must be kept on site and given to the Commissioner of Health and Human Services (alternative: the Band or its designee) upon request.

(d) A child care center may not use one experienced aide provision for one year following two determined experienced aide violations within a one-year period.

(e) A child care center may use one experienced aide per every four full-time child care classroom staff.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 8; Band Ordinance 30-09, § 3

### **§ 1449. Orientation training**

The license holder must ensure that every staff person, and volunteers who will have direct contact with or access to children and are not under the direct supervision of a staff person, are given orientation training and successfully complete the training before starting assigned duties. Completion of the orientation must be documented in the individual's personnel record. The orientation training must include information about:

(a) the center's philosophy, child care program, and procedures for maintaining health and safety, and handling emergencies and accidents;

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<sup>2</sup> So in original. Probably should be Subchapter II of Chapter 11.

<sup>3</sup> So in original. Probably should be Subchapter II of Chapter 11.

(b) specific job responsibilities.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 9.01.

### **§ 1450. First aid training**

(a) All teachers and assistant teachers and at least one staff person present in a vehicle transporting children in care must satisfactorily complete, within 90 days of the start of work, eight hours of first aid training unless this has been satisfactorily completed within the previous three years. The first aid training must be:

(1) repeated at least every three years;

(2) documented in the person's personnel record and indicated on the center's staffing chart; and

(3) provided by a licensed physician, a registered nurse or a licensed practical nurse trained to provide instruction in first aid, or an individual currently certified by the American Red Cross as a first aide instructor.

(b) On the date of initial licensure, at least one staff person with first aid training must be present in the center when children are in care and at least one person with first aid training must accompany children on field trips.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 9.02.

### **§ 1451. Cardiopulmonary resuscitation (CPR) training**

(a) At least one staff person trained in CPR and in the treatment of obstructed airways must be present in the center at all times when children are in care and at least one person with CPR training must accompany children on field trips.

(b) The individual must have completed four to six hours of CPR training which covers the use of CPR techniques with children within one year before initial employment at the center.

(c) CPR training must be provided or approved by American Red Cross, American Heart Association, a licensed physician, a registered nurse, or a licensed practical nurse trained to provide CPR instruction.

(d) Documentation of the completed CPR training must be in staff person's personnel record, and the staff person with training must be named on the center's staffing chart.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 9.03.

### **§ 1452. In-service training**

A license holder must ensure that an annual in-service training plan is developed and carried out and that it meets the requirements in the following items:

(a) The in-service training plan must:

(1) be consistent with the center's child care program plan;

(2) meet the training needs of individual staff persons as specified in each staff person's annual evaluation report.

(b) The director and all program staff persons must annually complete a number of hours of in-service training equal to at least two percent of the hours for which the director program staff person is annually paid.

(c) The annual requirements must be completed within the year for which it was required.

(d) In-service training requirement must be met by participation in early childhood development training. In this section, "early childhood development training" means training in child development; children with special needs; early childhood education methods of theory; curriculum planning; child study techniques; family studies; parent involvement; behavior guidance; child nutrition; child health and safety; recreation, sports, arts, and crafts, methods of theory, early childhood special education methods of theory; or child abuse and neglect prevention.

(e) First aid and CPR training may be counted as in-service training.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 9.04.

## **Part C**

### **Facilities and Equipment**

#### **Section**

- 1471. Indoor space.
- 1472. Room temperature.
- 1473. Screens.
- 1474. Equipment.

#### **Cross References**

Child care facility, see 8 MLBSA § 971 et seq.

#### **§ 1471. Indoor space**

The licensed capacity of the center must be limited by the amount of indoor space. A minimum of 35 square feet of indoor space must be available for each child in attendance.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 21.06.

#### **Cross References**

Child care, minimum usable floorspace, see 8 MLBSA § 974.

#### **§ 1472. Room temperature**

A minimum temperature of 68 degrees Fahrenheit must be maintained in indoor areas used by children.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 21.09.

#### **Cross References**

Child care facilities, heating system, see 8 MLBSA § 978.

#### **§ 1473. Screens**

Outside doors and windows used for ventilation must be screened to provide protection from insects.

#### Historical and Statutory Notes

Source: Band Statute 9503-MLC-46, § 21.12.

### § 1474. Equipment

(a) **Definitions.** For the purpose of this section, the following terms have the meanings given them.

(1) "Cognitive development equipment and materials" means equipment and materials designed to enhance components of intellectual development, such as problem solving abilities, observation skills, group skills, and symbol recognition.

(2) "Dramatic play equipment" or "practical life activity equipment" means equipment, such as dress up clothes, large or miniature play sets, figures, and small and large building blocks that can be used to design a setting or space that stimulates the child's imagination and encourages role playing and the learning of practical life skills.

(3) "Large muscle equipment" means equipment that is designed to enhance large muscle development and coordination, such as playground equipment, large boxes and pillows, large wheel toys, pull toys, balls, jump ropes, climbers, and rocking boats.

(4) "Manipulative equipment" means equipment that is designed to enhance fine motor development and coordination, such as pegs and peg boards, puzzles, beads and strings, interlocking plastic forms, and carpentry materials.

(5) "Sensory stimulation materials" means equipment, other than pictures, that has different shapes, colors, and textures that stimulate the child's visual and tactile senses. Examples of sensory stimulation materials include mobiles, crib attached activity boxes, sand and water activity materials, swatches of different textures of cloth, and wooden or plastic items of different shapes and colors.

(b) **General requirements.** Each child care program must have the quantity and type of equipment for the age categories of children served. Equipment must be appropriate to the age categories and any special needs of the children served. A center must have enough equipment for the number of children for which the center is licensed unless the use of equipment is rotated among groups of children.

(c) **Equipment and materials for infants.** The minimum equipment and materials required for a center serving infants are as follows: Furnishings:

- (1) one area rug or carpet per group;
- (2) a variety of non-folding child size chairs including infant seats and high chairs; one per child, or a minimum of four per group;
- (3) one changing table for every group of 12 infants and succeeding group of 12 or fewer infants;
- (4) one foot operated, covered diaper container per changing table;
- (5) one crib or portable crib waterproof mattress per child; and
- (6) one linear foot of low, open shelving per child.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 12.

### **Part D**

#### **Health and Safety**

##### **Section**

1501. Health policies.
1502. Emergency and accident policies and records.
1503. Emergency and accident procedures.
1504. Health consultation.
1505. First aid kit.
1506. Emergency equipment.
1507. Telephone; posted numbers.
1508. Fire extinguisher inspection.
1509. Hazardous areas, conditions and objects.
1510. Cleanliness and sanitation.
1511. Administration of medicine, diapering products, sunscreen lotions and insect repellents.

1512. Exclusion of sick children.

1513. Non-smoking.

#### **Cross References**

Health, child care, see 8 MLBSA § 1041 et seq.

Safety, child care, see 8 MLBSA § 1101 et seq.

### **§ 1501. Health policies**

The provider must develop written health policies approved by the Band and must ensure that they are carried out.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 20.01.

### **§ 1502. Emergency and accident policies and records**

(a) The applicant must develop written policies governing emergencies, accidents, and injuries. The license holder must ensure that written records are kept about incidents, emergencies, accidents, and injuries that have occurred.

(b) The policies must contain:

(1) Procedures for administering first aid.

(2) Safety rules to follow in avoiding injuries, burns, poisoning, choking, suffocation, and traffic, and pedestrian accidents.

(3) Procedures for the daily inspection of potential hazards.

(4) Procedures for fire prevention and procedures to follow in the event of a fire. Fire procedures must:

(A) mandate monthly fire drills and a log of drill times and dates;

(B) identify primary and secondary exits, building evacuation routes, the phone number of the fire department, person responsible for the evacuation of children, and areas for which they are responsible;

(C) contain instruction on how to use a fire extinguisher and how to close off the fire area; and

(D) provide for the training of staff persons to carry out the fire procedures.

(5) Procedures to follow in the event of a blizzard, tornado, or other natural disaster that include the location of emergency shelter, procedures for monthly tornado drills from April to September, and a log of times and dates showing that the drills were held.

(6) Procedures to follow when a child is missing.

(7) Procedures to follow if an unauthorized person or a person who is incapacitated or suspected of abuse attempts to pick up a child or if no one comes to pick up a child.

(8) Sources of emergency medical care.

(9) Procedures for recording accidents, injuries, and incidents involving a child enrolled in the center, a staff person, or a visitor. The written record must contain:

(A) the names and age of the persons involved;

(B) date and place of the accident, injury or incident;

(C) type of injury;

(D) action taken by staff; and

(E) to whom the accident, injury or incident was reported.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 16.

### **§ 1503. Emergency and accident procedures**

The license holder must ensure that written procedures for emergencies and accidents are posted in a visible place. The procedures must:

- (a) identify persons responsible for each area;
- (b) identify primary and secondary exits;
- (c) identify a tornado shelter area;
- (d) identify building evacuation routes;
- (e) describe how to use a fire extinguisher and close off the fire area; and
- (f) list the phone numbers and sources of emergency medical and dental care, poison control center, fire department, health authority.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 20.16.

### **§ 1504. Health consultation**

- (a) The Center must have a health consultant who must review the center's health policies and practices and certify that they are adequate to protect the health of children in care.
- (b) The consultant must review:
  - (1) The first aid and safety policies and procedures required by 8 MLBSA § 1502(b)(1) to (3).
  - (2) The diapering procedures and practices specified.
  - (3) The sanitation procedures and practices for food prepared.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 20.02.

### **§ 1505. First aid kit**

The license holder must ensure that a first aid kit is available within the center. The kit must contain sterile bandages and band-aids, sterile compresses, ipecac syrup, scissors, an ice bag or cold pack, an oral or surface thermometer and adhesive tape. A current first

aid manual must be included. The first aid kit and manual must be accessible to the staff in the center and taken on field trips. The ipecac syrup must be labeled with instructions to call and number for the local poison center. The provider must ensure that ipecac syrup is administered according to the instructions of the poison control center.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 20.11.

#### **Cross References**

Child care, health, first-aid kit see 8 MLBSA § 1048.

Emergency items, child care facilities, see 8 MLBSA § 977.

### **§ 1506. Emergency equipment**

The center must have a battery operated flashlight and battery operated portable radio.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 20.13.

#### **Cross References**

Emergency items, child care facilities, see 8 MLBSA § 977.

### **§ 1507. Telephone; posted numbers**

A telephone that is not coin-operated must be located within the center. A list of emergency numbers must be posted next to the telephone. The 911 emergency number, when available, must be posted. If 911 emergency number is not available, the numbers listed must be those of the local fire department, police department, emergency transportation, and poison control center.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 21.05.

#### **Cross References**

Emergency telephone numbers, child care safety, see 8 MLBSA § 1105.

Telephone, child care safety, see 8 MLBSA § 1104.

### **§ 1508. Fire extinguisher inspection**

Fire extinguishers must be serviced annually by a qualified inspector. The name of the inspector and date of the inspection must be written on a tag attached to the extinguisher.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 21.11.

#### **Cross References**

Child care safety, fire extinguishers, see 8 MLBSA § 1102.

### **§ 1509. Hazardous areas, conditions and objects**

(a) **Hazardous areas.** Kitchens, stairs, and other hazardous areas must be inaccessible to children except during periods of supervised use.

(b) **Maintenance of areas used by children.** The areas used by children must be free from debris, loose flaking, peeling, or chipped paint, loose wallpaper, or crumbling plaster, litter, and holes in the walls, floors, and ceilings. Rugs must have a non-skid backing or be firmly fastened to the floor and be free from tears, curled or frayed edges, and hazardous wrinkles.

(c) **Shielding of hot surfaces.** Radiators, fireplaces, hot pipes, and other hot surfaces in areas used by children must be shielded or insulated to prevent burns.

(d) **Electrical outlets.** Except in a center that serves only school age children, electrical outlets must be tamper proof or shielded when not in use.

(e) **Condition of equipment, furniture and toys.** (1) Equipment and furniture must be durable, in good repair, structurally sound and stable following assembly and installation. Equipment must be free of sharp edges, dangerous protrusions, points where a child's extremities could be pinched or crushed, and openings or angles that could trap part of child's body. Tables, chairs, and other furniture must be appropriate to the age and size of children who use them. Toys and equipment that are likely to be mouthed by infants and toddlers must be made of a material that can be disinfected. These must be cleaned and disinfected when mouthed or soiled and at least daily.

(2) Infant rattles must meet the United States consumer product safety standards contained in the Code of Federal Regulations, title 16, sections 1510.1 to 1510.4, as adopted

on May 23, 1978. All toys and other articles intended for use by children under three years of age that present choking, aspiration, or ingestion hazards because of small parts must meet the size standards in Code of Federal Regulations, title 16, sections 1501.1 to 1501.5, as adopted on June 15, 1979.

(f) **Hazardous objects.** Sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 20.12, 20.14, 20.15, 21.07, 21.08, 21.10.

#### **Cross References**

Electrical outlets, child care safety, see 8 MLBSA § 1103.

Floors, child care facilities, see 8 MLBSA § 981.

Furniture, equipment and toys, child care safety, see 8 MLBSA § 1109.

Good repair, child care facilities, see 8 MLBSA § 982.

Hot surfaces, child care safety, see 8 MLBSA § 1106.

Storage of medications and poisonous items, child care facilities, see 8 MLBSA § 979.

### **§ 1510. Cleanliness and sanitation**

(a) **Cleanliness.** The indoor and outdoor space and equipment of the center must be clean.

(b) **Toilets and hand sinks.** Toilets and hand sinks must be provided.

(1) The center must have at least one hand sink and one toilet for each 15 children in the building accessible.

(2) Hand sinks for children must not be used for custodial work or food preparation.

(3) Single service towels or air dryers must be available to dry hands and designed for easy use by the children.

(c) **Toilet facilities.** The toilet rooms of the center must be cleaned daily. Toilet training chairs must be emptied, washed with soap and water, and disinfected after each use. Toilets and seats must be washed with soap and water and disinfected when soiled or at least daily.

(d) **Hand washing: staff person.** A staff person must wash his/her hands with soap and water after changing a child's diaper, after using toilet facilities, and before handling food or eating.

(e) **Hand washing: child.** A child's hands must be washed with soap and water after a diaper change, after use of a toilet or toilet training chair, and before eating a meal or snack. Staff must monitor hand washing and assist a child who needs help. The use of a common basin or a hand sink filled with standing water is Prohibited.

(f) **Toilet articles.** The license holder shall provide the following supplies and make them accessible to children: toilet paper, liquid hand soap, facial tissues, and single use paper towels or warm air hand dryers.

(g) **Diaper changing area.** A diaper must be changed only in the diaper changing area. The diaper changing area must be separate from areas used for food storage, food preparation, and eating. The area must have a hand sink equipped with hot and cold running water within three feet of the diaper changing surface a smooth nonabsorbent diaper changing surface and floor covering, and a container operated by a foot pedal for soiled and wet diapers.

(h) **Diaper changing procedures.** The center must have and follow diaper changing procedures that have been developed in consultation with a health consultant. The license holder must post the diaper changing procedures in the diaper changing area.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 20.04 to 20.10, 21.13.

#### **Cross References**

Clean floors, child care facilities, see 8 MLBSA § 981.

Cleanliness and good repair, child care facilities, see 8 MLBSA § 982.

Toilets and washbowls, child care facilities, see 8 MLBSA § 976.

### **§ 1511. Administration of medicine, diapering products, sunscreen lotions and insect repellents**

(a) The license holder must get written permission from the child's parent before administering medicine, diapering products, sunscreen lotions, and insect repellents. Non-prescription medicines, diapering products, sunscreen lotions, and insect repellents must be administered according to the manufacturer's instructions for their use provided by a license physician or dentist.

(b) The license holder must get and follow written instructions from a licensed physician or dentist before administering each prescription medicine. Medicine with child's name and current prescription information on the label constitutes instructions.

(c) All medicine must be kept in its original container and have legible label stating the child's name.

(d) The medicine must be given only to the child whose name is on the label. The medicine must not be given after an expiration date on the label, and any unused portion must be returned to the child's parent or destroyed. The license holder must ensure that the administration of medicine is recorded and given the name of the child, name of the medication or prescription number, date, time, dosage, and the name and signature of the person who dispensed the medicine. The record must be available to the parent and maintained in the child's record.

(e) Sunscreen lotions and insect repellents supplied by the license holder may be used on more than one child. A product to control or prevent diaper rash, including premoistened commercial wipes that cannot be dispensed in a manner that prevents cross contamination of the product and container as determined by the health consultant, must be labeled with the child's name and used only for the individual whose name is written on the label.

(f) Medicines, insect repellents, sunscreen lotions, and diaper rash control products must be stored according to directions on the original container and so that they are inaccessible to children.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 20.02.

#### **Cross References**

Medication, child care, health, see 8 MLBSA § 1047.

Storage of medications and poisonous items, child care facilities, see 8 MLBSA § 979.

### **§ 1512. Exclusion of sick children**

A child with any of the following conditions or behaviors is a sick child and must be excluded from a center not licensed to operate a sick child program. If the child becomes sick while at the center, the child must be isolated from other children in care and the parent called immediately. A sick child must be supervised at all times. The license holder must exclude a child:

- (a) with a reportable illness or condition that the Commissioner of Health and Human Services determines to be contagious and a physician determines has not had sufficient treatment to reduce the health risk to others;
- (b) with chicken pox until the child is no longer infectious or until the lesions are crusted over;
- (c) who has vomited two or more times since admission that day;
- (d) who has had three or more abnormally loose stools since admission that day;
- (e) who has contagious conjunctivitis or pus draining from the eye;
- (f) who has a bacterial infection such as streptococcal pharyngitis or impetigo and has not completed 24 hours of antimicrobial therapy;
- (g) who has unexplained lethargy;
- (h) who has lice, ringworm, or scabies that is untreated and contagious to others;
- (i) who has a 100 degree Fahrenheit axially or higher temperature of undiagnosed origin before fever reducing medication is given;
- (j) who has an undiagnosed rash or a rash attributable to a contagious illness or condition;
- (k) who has significant respiratory distress;
- (l) who is not able to participate in child care program activities with reasonable comfort; or
- (m) who requires more care than the program staff can provide without compromising the health and safety of other children in care.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 13.

#### **Cross References**

Children who become ill, see 8 MLBSA § 1046.  
Children with communicable diseases, see 8 MLBSA § 1045.  
Space designated for use by ill child, see 8 MLBSA § 980.

### **§ 1513. Nonsmoking**

A center must comply with the Mille Lacs Band's clean air standards as prescribed by law.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 20.03.

#### **Part E**

#### **Food**

##### **Section**

- 1541. Availability of meals and snacks.
- 1542. Staff to sit with children at meals or snacks.
- 1543. Menus.
- 1544. Infant diets.
- 1545. Sanitation.

### **§ 1541. Availability of meals and snacks**

- (a) The provider must see that meals and supplemental snacks are available. Bag lunches provided by the parent are acceptable.
- (b) There must be a snack for a child in attendance for more than two hours, but fewer than five hours.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46 §§ 21.01, 21.03.

#### **Cross References**

Provision of meals and snacks, see 8 MLBSA § 1072.

### **§ 1542. Staff to sit with children at meals or snacks**

There must be program staff who are seated with the children during meal and snack times.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 21.03.

### **Cross References**

Meals and snacks to be served family style, see 8 MLBSA § 1076.

## **§ 1543. Menus**

When food is provided by the license holder, menus must be planned on a monthly basis and posted in a conspicuous place where they can be reviewed by parents. A sample menu must be provided to parents at the time of admission. Menus must comply with the nutritional requirements of the United States Department of Agriculture, Food and Nutrition Service, Code of Federal Regulations, Title 7, section 226.20.

### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 21.02.

### **Cross References**

Admissions, see 8 MLBSA § 1141 et seq.

## **§ 1544. Infant diets**

The diet of an infant must be determined by the infant's parent. The provider must ensure that sanitary procedures and practices are used to prepare, handle, and store formula, milk, breast milk, solid foods, and supplements. Procedures must be reviewed and certified by a health consultant. A center serving infants must:

- (a) obtain written dietary instructions from the parent of the child;
- (b) have the infant's feeding schedule available in the food preparation area;
- (c) offer the child formula or milk and nutritionally adequate solid foods in prescribed quantities at specified time intervals; and
- (d) label each child's bottle.

### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 21.04.

### **Cross References**

Infant diets, see 8 MLBSA § 1074.

## **§ 1545. Sanitation**

Procedures for preparing, handling, and serving food, and washing food, utensils, and equipment must comply with the requirements for food and beverage establishments. If the food is prepared off-site by another facility or if food service is provided according to a contract with a food service provider, the facility or license holder must ensure that food is prepared in compliance with local health codes. The provider must provide refrigeration for dairy products and other perishable foods, whether supplied by the licensed holder or supplied by the parent. The refrigeration must have a temperature of 40 degrees Fahrenheit or less. Tables and highchair trays used for meals must be washed with soap and water before and after each use.

### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 21.03.

### **Cross References**

Sanitary food-handling, see 8 MLBSA § 1073.

## **Part F**

### **Program**

#### **Section**

- 1571. Child care program plan.
- 1572. Participation in field trips.
- 1573. Behavior guidance.

### **Cross References**

Program, see 8 MLBSA § 1001 et seq.

## **§ 1571. Child care program plan**

The applicant must develop a written child care program plan. The child care program plan must:

- (a) mandate that children have supervision at all times;
- (b) describe the days and hours of operation of the program;
- (c) describe the general educational methods to be used by the program and the religious, political, or philosophical basis, if any;

(d) specify activities designed to promote the intellectual, social, and emotional development of a child in a manner consistent with the child's cultural background;

(e) provide for activities that are both quiet and active, teacher directed and child initiated;

(f) provide for a variety of activities that require the use of varied equipment and materials; and

(g) be available to parents for review on request.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 10.01.

#### **Cross References**

Center administration records, see 8 MLBSA § 1671.

### **§ 1572. Participation in field trips**

The provider must ensure that written permission is obtained from each child's parent before taking a child on a field trip. A written permission form must be obtained before each field trip. The parent's written permission must state that the parent has been informed of the purpose and destination of the field trip.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 15.

#### **Cross References**

Permission to participate in activities away from the physical facility, see 8 MLBSA § 1144.

### **§ 1573. Behavior guidance**

(a) **General requirements.** The applicant must develop written behavior guidance policies and procedures. These policies and procedures must:

(1) ensure that each child is provided with a positive model of acceptable behavior;

(2) be tailored to the developmental level of the children the center is licensed to serve;

- (3) redirect children and groups away from problems toward constructive activity in order to reduce conflict;
- (4) teach children how to use acceptable alternatives to problem behavior in order to reduce conflict;
- (5) protect the safety of children and staff persons; and
- (6) provide immediate and directly related consequences for a child's unacceptable behavior.

(b) **Separation from the group.** No child may be separated from the group unless the provider has tried less intrusive methods of guiding the child's behavior which have been ineffective and the child's behavior threatens the well being of the child or other children in the center. A child who requires separation from the group must remain within an unenclosed part of the classroom where the child can be continuously seen and heard by a program staff person. When separation from the group is used as a behavior guidance technique, the child's return to the group must be contingent on the child's stopping or bringing under control the behavior that precipitated the separation, and the child must be returned to the group as soon as the behavior that precipitated the separation abates or stops. A child between the ages of six weeks and 16 months must not be separated from the group as a means of behavior guidance.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 11.

#### **Cross References**

Punishment, see 8 MLBSA § 1004.

#### **Part G**

#### **Access**

#### **Section**

1601. Parent visitation.

1602. Access by Band.

### **§ 1601. Parent visitation**

Parents may visit the center any time during the hours of operation.

### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 14.

### **§ 1602. Access by Band**

The Band must be given access to the center, including grounds, documents, persons served by the child care programs, and staff persons.

### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 21.14.

### **Cross References**

Access to facility for evaluation, see 8 MLBSA § 949.

## **Part H**

### **Transportation**

#### **Section**

1641. Transportation policies.

### **§ 1641. Transportation policies**

A license holder who provides transportation for children or contracts to provide transportation must comply with the following transportation policies:

- (a) The vehicle must be licensed according to Statutes and comply with the equipment standards.
- (b) The vehicle must be driven by a person who holds a current Minnesota driver's license appropriate to the vehicle driven.
- (c) Staff ratios must be maintained on all transportation provided on all field trips.
- (d) When children are driven in a private car or van, a second adult must be present when more than four children under the age of five are being transported.

(e) When the license holder provides transportation to and from the center, a second adult must be present in the vehicle and children must not be transported more than one hour per one-way trip.

(f) When children are transported, they must be restrained in accordance with Minnesota Statutes, Section 169.686, and a child under the age of four may be transported only if the child is properly fastened in a child passenger restraint system that meets the federal motor vehicle safety standards contained in Code of Federal Regulations, title 49, section 571.213.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 22.

#### **Cross References**

Motor vehicle registration, see 19 MLBSA § 101 et seq.

### **Part I**

#### **Records**

##### **Section**

1671. Center administration records.

1672. Personnel records.

1673. Children's records.

#### **Cross References**

Child care in residences, records and reports, see 8 MLBSA § 1801 [Digitizer's note: Section not in digital copy] et seq.

Program operation, records, see 8 MLBSA § 1242.

### **§ 1671. Center administration records**

The records required by this section must be maintained within the center and be available for inspection at the request of the commissioner. The license holder must ensure that the following are maintained:

- (a) the personnel records
- (b) the children's records
- (c) the child care program plan

(d) the accident, injury, emergency, and incident records.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46. § 17.

#### **Cross References**

Child care program plan, see 8 MLBSA § 1571.

### **§ 1672. Personnel records**

(a) The provider must ensure that a personnel record for each staff person is maintained at the center. The personnel record for each staff person must contain:

(1) the staff person's name, home address, home telephone number, and date of birth;

(2) the telephone number of a person to be notified in an emergency;

(3) the staff person's job description;

(4) documentation that the staff person has completed the applicant background study;

(5) the staff person's application, resume, and documentation indicating that the staff person meets the requirements of the staff person's job description and the education requirements;

(6) documentation that the staff person has completed the orientation to the center;

(7) documentation, when applicable, that the staff person has completed the first aid and CPR training;

(8) documentation of completion of the in-service training, showing the training topic, source of training, number of hours completed.

(9) documentation of procedures for and completion of annual evaluation of the staff person's work and specification of in-service training needs; and

(10) documentation of any disciplinary action including termination.

(b) The provider shall not disclose a staff person's personnel record to any person other than the staff person, the staff person's legal representative, the staff person's supervisor, or employees of the provider designated by the Provider to maintain personnel records, and the commissioner, unless the staff person has given written consent or as otherwise required by law.

#### **Historical and Statutory Notes**

**Source:** Band Statute 9503-MLC-46, § 18.

#### **Cross References**

Qualifications and training of staff, see 8 MLBSA § 1441 et seq.

### **§ 1673. Children's records**

(a) At the time of enrollment in the center, the provider must ensure that a record is maintained on each child. The record must contain:

- (1) the child's full name, birthdate, and current home address;
- (2) the name, address, and telephone number of the child's parent;
- (3) instructions on how the parent can be reached when the child is attending the center;
- (4) the names and telephone numbers of any persons authorized to take the child from the center;
- (5) the names and telephone numbers of the child's source of regular medical and dental care and the source of medical and dental care to be used in case of an emergency;
- (6) written authorization, if granted, for the license holder to administer ipecac syrup according to Poison Control.

(b) The provider shall not disclose a child's record to any person other than the child, the child's parent or guardian, the child's legal representative, employees of the license holder, and the commissioner unless the child's parent or guardian has given written consent or as otherwise required by law.

**Historical and Statutory Notes**

Source: Band Statute 9503-MLC-46, § 19.

**SUBCHAPTER III**

**DROP-IN CHILD CARE CENTERS**

<b>Part</b>	<b>Section</b>
<b>A. Definitions</b>	<b>1701</b>
<b>B. Licensure</b>	<b>1702</b>
<b>C. Staff Requirements</b>	<b>1724</b>
<b>D. Health and Safety</b>	<b>1725</b>
<b>E. Records</b>	<b>1736</b>

**Historical and Statutory Notes**

Band Ordinance 31-09 is entitled: “An ordinance amending Chapter 11 entitled Child Care of Title 8 of the Mille Lacs Band Statutes Annotated (MLBSA) for the purpose of adding Subchapter III entitled Drop-In Child Care Centers to regulate this specific type of Child Care Center operating on Band lands to ensure the safety of children.”

The preamble to Band Ordinance 31-09 provides: “It is enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Ojibwe for the purpose of amending Chapter 11 of Title 8 of the Mille Lacs Band Statutes Annotated (MLBSA) in order to add Subchapter III entitled Drop-In Child Care Centers for the purpose of regulating this specific type of child care center located on Band lands and to ensure the safety of children.”

Section 1 of Band Ordinance 31-09 provides: “The new Subchapter III of Chapter 11 of Title 8 of the Mille Lacs Band Statutes Annotated (MLBSA) is attached hereto as Exhibit A. The Band Assembly reserves the right to amend or delete this subchapter at any time.”

**Part A  
Definitions**

**Section**

1701. Definitions

**§ 1701. Definitions**

The Mille Lacs Band of Ojibwe Indians hereby establishes the following definitions of the terms to be utilized when interpreting this subchapter.

(a) “Age category”: the designation given a child according to the child’s age. The age categories are as follows:

(1) “Infant”: a child who is at least six weeks old but less than 16 months old.

(2) “Toddler”: a child at least 16 months old but less than 33 months old.

(3) “Preschooler”: a child who is at least 33 months old but less than 60 months and who has not yet attended the first day of kindergarten.

(4) “School age”: a child who is at least 60 months old and has attended the first day of kindergarten but less than 13 years of age.

(b) “Annual” or “annually”: prior to or within the same month of the subsequent calendar year.

(c) “Applicant”: an individual, corporation, partnership, voluntary association, controlling individual, or other organization that has applied for licensure under this subchapter.

(d) “Band”: the Mille Lacs Band of Ojibwe Indians or its designee, such as one of its governmental agencies or officials.

(e) “Certification”: the written authorization for a license holder licensed by the Mille Lacs Band of Ojibwe Indians. The term “certification” and its derivatives have the same meaning and may be substituted for the term “licensure” and its derivatives in this subchapter.

(f) “Clean”: free from dirt or other contaminants that can be detected by sight, smell, or touch.

(g) “Child”: a person who has not reached age 18.

(h) “Controlling individual”: a public body, governmental agency, business entity, officer, owner, or managerial official whose responsibilities include the direction of the management or policies of a drop-in child care program. For purposes of this subchapter, owner means an individual who has direct or indirect ownership interest in a corporation, partnership, or other business association issued a license under this subchapter. For purposes of this subchapter, managerial official means those individuals who have the decision-making authority related to the operation of the program, and the responsibility for the ongoing management of or direction of the policies, services, or employees of the program.

(i) “Disinfected”: treated to reduce microorganism contamination after an object has been cleaned. Disinfection must be done by rinsing or wiping with a solution of one-fourth cup chlorine bleach plus water to equal one gallon, or an equivalent product or process approved by Indian Health Service (“IHS”).

(j) “Disqualification”: an offense or charge as defined by 8 MLBSA §1444, Disqualification factors.

(k) “Drop-in child care program”: a nonresidential program of child care in which children participate on a onetime only or occasional basis up to a maximum of 90

hours per child, per month that provides care for children listed in the age categories defined above. A drop-in child care program must be licensed under Mille Lacs Band of Ojibwe Statutes governing drop-in child care centers.

(l) “Experience”: for purposes of drop-in child care centers, includes paid or unpaid employment serving children as a teacher, assistant teacher, aide, or a student intern in a licensed child care center, or work as a student intern in a licensed center, a school operated by a state commissioner of education or by a legally constituted local school board, or a private school approved under rules administered by a state commissioner of education.

(m) “Facility”: the indoor and outdoor space in which the child care program is provided.

(n) “Health consultant”: a physician licensed to practice medicine, a public health nurse or registered nurse.

(o) “Interpretive guidelines”: a policy statement that has been published pursuant to this subchapter which provides interpretation, details, or supplementary information concerning the application of laws or rules. Interpretive guidelines are published for the information and guidance of consumers, providers of service, Band agencies, and others concerned.

(p) “License”: a certificate issued by the Band authorizing the license holder to provide a drop-in child care program for a specified period of time and in accordance with the terms of the license and Mille Lacs Band Statutes.

(q) “License holder”: an individual, corporation, partnership, voluntary association, or other organization that is legally responsible for the operation of the program, has been granted a license by the Band under this subchapter, and is a controlling individual.

(r) “Licensed capacity”: the maximum number of children for which the license holder is licensed to operate a child care program in a center at any one time.

(s) “Medicine”: a substance used to treat disease or injuries, maintain health, heal, or relieve pain. The term applies to prescription and nonprescription substances taken internally or applied externally.

(t) “Parent”: the person or persons with legal custody of the child.

(u) “Program staff person”: a teacher, assistant teacher, or aide, whether paid or unpaid, who carries out the child care program plan in the center and has direct contact with children.

(v) “Sick child”: a child with a medical condition or illness.

(w) “Staff supervision”: the responsibilities to hire, train, assign duties and direct staff in day to day activities and evaluate staff performance. A "supervisor" is a person with staff supervision responsibility.

(x) “Supervision”: for purposes of drop-in child care centers, when a program staff person is within sight and hearing of a child at all times so that the program staff can intervene to protect the health and safety of the child. When an infant is placed in a crib room to sleep, supervision occurs when a staff person is within sight or hearing of the infant. When supervision of a crib room is provided by sight or hearing, the center must have a plan to address the other supervision component.

(y) “Variance”: time limited written permission by the Band for an applicant or license holder to depart from the provisions of this subchapter if equivalent alternative measures are taken to ensure the health, safety, and rights of the children in care.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1701

#### **Part B Licensure**

##### Section

- 1702. Licensure
- 1703. License required
- 1704. Unlicensed drop-in child care programs
- 1705. Application for Licensure
- 1706. Background Study
- 1707. Conclusive determinations or dispositions
- 1708. Inspections; waiver
- 1709. The Band’s right of access
- 1710. The Band’s evaluation
- 1711. Grant of license
- 1712. Variances
- 1713. Policies and procedures for program administration required and enforceable
- 1714. Emergency planning
- 1715. Denial of application
- 1716. Investigations and license expiration
- 1717. Correction Order and Conditional License
- 1718. Failure to comply
- 1719. Requirement to post conditional license, correction, or sanction order
- 1720. Sanction orders; appeals
- 1721. Fine Schedule
- 1722. Granting subsequent license
- 1723. License or certification fee

#### **§ 1702. Licensure**

The Mille Lacs Band of Ojibwe Indians hereby establishes the following licensing standards and procedures for drop-in child care centers.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 17012

#### **§ 1703. License required**

Unless licensed by the Band, an individual, corporation, partnership, voluntary association, other organization, or controlling individual must not operate a drop-in child care center program.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1703

#### **§ 1704. Unlicensed drop-in child care programs**

(a) It is a misdemeanor, subject to prosecution pursuant to 24 MLBSA §1054, for an individual, corporation, partnership, voluntary association, other organization, or a controlling individual to provide a drop-in child care program without a license and in willful disregard of this subchapter.

(b) The Band will issue a closure order to prevent the continued operation of a drop-in child care program, if an individual, corporation, partnership, voluntary association, other organization, or controlling individual has:

(1) failed to apply for a license after receiving notice that a license is required or continues to operate without a license after receiving notice that a license is required;

(2) continued to operate without a license after the license has been revoked or suspended, and a final order has been issued affirming the revocation or suspension, or the license holder did not timely appeal the sanction; or

(3) continued to operate without a license after the license has been temporarily suspended.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1704

#### **§ 1705. Application for Licensure**

An individual, corporation, partnership, voluntary association, other organization or controlling individual that is subject to licensure under this subchapter must apply for a license. The application must be made on the forms and in the manner prescribed by the Band. The Band will provide the applicant with instruction in completing the application and provide information about the rules and requirements that affect the applicant.

(a) The Band will act on the application within 30 working days after a complete application and any required reports have been received from other agencies or departments, counties, municipalities, or other political subdivisions. The Band will not consider an application to be complete until the Band receives all of the information required under this subchapter.

(b) An application for licensure must specify one or more controlling individuals as an agent who is responsible for dealing with the Band on all matters provided for in this subchapter and on whom service of all notices and orders must be made. The agent must be authorized to accept service on behalf of all of the controlling individuals of the program. Service on the agent is service on all of the controlling individuals of the program. It is not a defense to any action arising under this subchapter that service was not made on each controlling individual of the program. The designation of one or more controlling individuals as agents under this paragraph does not affect the legal responsibility of any other controlling individual under this chapter.

(c) An applicant or license holder must have a policy that prohibits license holders, employees, subcontractors, and volunteers, when directly responsible for persons served by the program, from abusing prescription medication or being in any manner under the influence of a chemical that impairs the individual's ability to provide services or care. The license holder must train employees, subcontractors, and volunteers about the program's drug and alcohol policy.

(d) An applicant and license holder must have a program grievance procedure that permits persons served by the program and their authorized representatives to bring a grievance to the highest level of authority in the program.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1705

#### **§ 1706. Background Study**

Individuals and organizations providing drop-in child care programs are required under this subchapter to provide the Band's Office of the Solicitor General and the Band's Gaming Regulatory Authority ("GRA") with background studies for all controlling individuals and employees of the program. All such studies must meet the requirements of 8 MLBSA § 1444, Disqualification factors.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1706

#### **§ 1707. Conclusive determinations or dispositions**

A disqualification determination or maltreatment determination or disposition is deemed conclusive and not subject to appeal.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1707

#### **§ 1708. Inspections; waiver**

Before issuing an initial license and throughout the term of the license, Indian Health Service shall conduct an inspection of the program for health and safety purposes. Before issuing an initial license and throughout the term of the license, the Band or Indian Health Service may conduct an inspection of the program, including but not limited to:

- (a) an inspection of the program's facility;
- (b) an inspection of records and documents;
- (c) an evaluation of the program by consumers of the program;
- (d) observation of the program in operation; and
- (e) written health policies.

For the purposes of this subchapter, "consumer" means a person who receives the services of a licensed program, the person's legal guardian, or the parent or individual having legal custody of a child who receives the services of a licensed program.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1708

#### **§ 1709. The Band's right of access**

(a) When the Band is exercising the powers conferred by this subchapter, the Band must be given access to the program's facility where the program is provided, documents, persons served by the program, and staff whenever the program is in operation and the information is relevant to inspections or investigations conducted by the Band. The Band must be given access without prior notice and as often as the Band considers necessary if the Band is conducting an investigation of allegations of maltreatment or other violation of applicable laws or rules. In conducting inspections, the Band may request and shall receive assistance from other governmental agencies and departments. The applicant or license holder shall allow the Band to photocopy, photograph, and make audio and video tape recordings during the inspection of the program. The Band shall obtain a court order or the consent of the subject of the records

or the parents or legal guardian of the subject before photocopying hospital medical records.

(b) Persons served by the program have the right to refuse to consent to be interviewed, photographed, or audio or videotaped. Failure or refusal of an applicant or license holder to fully comply with this section is reasonable cause for the Band to deny the application or immediately suspend or revoke the license.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1709

### **§ 1710. The Band's evaluation**

(a) Before issuing, denying, suspending, revoking, or making conditional a license, the Band or its designee shall evaluate information gathered under this section. The Band's evaluation shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the applicant or license holder.

(b) The Band shall evaluate the results of any study, inspection, or investigation to determine whether a risk of harm to the persons served by the program exists.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1710

### **§ 1711. Grant of license**

(a) If the Band determines that the program complies with all applicable rules and laws, the Band may issue a license. At minimum, the license shall state:

- (1) the name of the license holder;
- (2) the address of the program;
- (3) the effective date and expiration date of the license;
- (4) the type of license;
- (5) the maximum number and ages of persons that may receive services from the program; and
- (6) any special conditions of licensure.

(b) The Band may issue an initial license for a period not to exceed one year if:

(1) the Band is unable to conduct the evaluation or observation required by this subchapter, because the program is not yet operational;

(2) certain records and documents are not available because persons are not yet receiving services from the program; and

(3) the applicant complies with applicable laws and rules in all other respects.

(c) A decision by the Band to issue a license does not guarantee that any person or persons will be placed or cared for in the licensed program. A license shall not be transferable to another individual, corporation, partnership, voluntary association, other organization, or controlling individual or to another location.

(d) A license holder must notify the Band and obtain the Band's approval before making any changes that would alter the license information listed under paragraph (a).

(e) The Band will not issue a license if the applicant, license holder, or controlling individual has:

(1) been disqualified and the disqualification was not set aside;

(2) has been denied a license within the past two years; or

(3) had a license revoked within the past five years.

(f) Unless otherwise specified by statute, all licenses expire at 12:00 a.m. on the day after the expiration date stated on the license. A license holder must apply for and be granted a new license to operate the program or the program must not be operated after the expiration date.

(g) Upon the expiration of an initial license, the Band may grant subsequent licenses for a period not to exceed two years.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1711

#### **§ 1712. Variances**

(a) The Band may grant variances to rules that do not affect the health or safety of persons in a licensed program if the following conditions are met:

(1) the variance must be requested by an applicant or license holder on a form and in a manner prescribed by the Band;

(2) the request for a variance must include the reasons that the applicant or license holder cannot comply with a requirement as stated in the rule and the alternative equivalent measures that the applicant or license holder will follow to comply with the intent of the rule; and

(3) the request must state the period of time for which the variance is requested.

(b) The Band may grant a permanent variance when conditions under which the variance is requested do not affect the health or safety of persons being served by the licensed program, nor compromise the qualifications of staff to provide services. The permanent variance shall expire as soon as the conditions that warranted the variance are modified in any way. Any applicant or license holder must inform the Band of any changes or modifications that have occurred in the conditions that warranted the permanent variance. Failure to advise the Band shall result in revocation of the permanent variance and may be cause for other sanctions provided by this subchapter. The Band's decision to grant or deny a variance request is final and not subject to appeal.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1712

### **§ 1713. Policies and procedures for program administration required and enforceable**

(a) The license holder shall develop program policies and procedures necessary to maintain compliance with licensing requirements under this subchapter.

(b) The license holder shall:

(1) provide training to program staff related to their duties in implementing the program's policies and procedures developed under paragraph (a);

(2) document the provision of this training; and

(3) monitor implementation of policies and procedures by program staff.

(c) The license holder shall keep program policies and procedures readily accessible to staff and index the policies and procedures with a table of contents or another method approved by the Band.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1713

### **§ 1714. Emergency planning**

Upon request, the license holder must cooperate with the Band's Tribal Emergency Response Committee ("TERC"), the Band's government disaster planning agency, to prepare for or react to emergencies presented by natural, technical, hazardous material, and terrorism disasters.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1714

### **§ 1715. Denial of application**

The Band may deny a license if an applicant fails to comply with applicable laws or rules, or knowingly withholds relevant information from or gives false or misleading information to the Band in connection with an application for a license or during an investigation. An applicant whose application has been denied by the Band must be given notice of the denial. Notice must be given by certified mail or personal service. The notice must state the reasons the application was denied and must inform the applicant of the right to a contested case hearing under this subchapter. The applicant may appeal the denial by notifying the Band in writing by certified mail or personal service within 20 calendar days after receiving notice that the application was denied.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1715

### **§ 1716. Investigations and license expiration**

(a) If a license holder is under investigation and the license is due to expire before completion of the investigation, the program may be issued a new license upon completion of the reapplication requirements. Upon completion of the investigation, a licensing sanction may be imposed against the new license under this subchapter.

(b) Failure to reapply or closure of a center by the license holder prior to the completion of any investigation shall not preclude the Band from issuing a licensing sanction under this subchapter at the conclusion of the investigation.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1716

### **§ 1717. Correction Order and Conditional License**

(a) If the Band finds that the applicant or license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the Band may issue a correction order and

an order of conditional license to the applicant or license holder. When issuing a conditional license, the Band shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program. The correction order or conditional license must state:

- (1) the conditions that constitute a violation of the law or rule;
- (2) the specific law or rule violated;
- (3) the time allowed to correct each violation; and
- (4) if a license is made conditional, the length and terms of the conditional license.

(b) Nothing in this section prohibits the Band from issuing a sanction, prior to issuing a correction order or conditional license.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1717

#### **§ 1718. Failure to comply**

If the Band finds that the applicant or license holder has not corrected the violations specified in the correction order or conditional license, the Band may impose a fine and order other licensing sanctions.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1718

#### **§ 1719. Requirement to post conditional license, correction, or sanction order**

For license holders, upon receipt of any correction, order of conditional license, or sanction order issued by the Band under this subchapter, the license holder shall post the correction order, order of conditional license, or sanction order in a place that is conspicuous to the people receiving services and all visitors to the facility for two years. When the correction order, order of conditional license, or sanction order is accompanied by a maltreatment investigation memorandum, the investigation memoranda must be posted with the correction order, order of conditional license, or sanction order.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1719

#### **§ 1720. Sanction orders; appeals**

(a) In addition to making a license conditional, the Band may suspend or revoke the license, or impose a fine against a license holder who does not comply with applicable law or rule. When ordering sanctions authorized under this section, the Band shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.

(1) License suspension or revocation. The Band may act immediately to suspend or revoke a license if a license holder fails to comply fully with applicable laws or rules, the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, if a license holder or an employee subject to a background study has a disqualification, if a license holder knowingly withholds relevant information from or gives false or misleading information to the Band in connection with an application for a license, in connection with the background study status of an individual, during an investigation, or regarding compliance with applicable laws or rules. A license holder who has had a license suspended or revoked must be given notice of the action by certified mail or personal service. If mailed, the notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the license was suspended or revoked.

(2) Fines. If the license holder is ordered to pay a fine, the notice must inform the license holder of the responsibility for payment of fines and the right to appeal. The license holder shall pay the fines assessed on or before the payment date specified. If the license holder fails to fully comply with the order, the Band may issue a second fine or suspend the license until the license holder complies. A license holder shall promptly notify the Band, in writing, when a violation specified in a sanction order to forfeit a fine is corrected. If upon re-inspection the Band determines that a violation has not been corrected as indicated by the order to forfeit a fine, the Band may issue a second fine. The Band shall notify the license holder by certified mail or personal service that a second fine has been assessed. The license holder may appeal the second fine as provided under this section.

(b) Appeal. Appeals must be made within five business days of receipt of a sanction.

(1) An appeal hearing must be conducted by the Court of Central Jurisdiction within 30 calendar days, unless an extension is requested by either party and granted for good cause. The burden of proof under this section shall be limited to the Band's demonstration that reasonable cause exists that the license holder's actions or failure to comply with applicable law or rule poses, or the actions of other individuals or conditions in the program poses an imminent risk of harm to the health, safety, or rights of persons served by the program.

(2) The Court shall issue findings of fact, conclusions, and a recommendation within ten working days from the date of hearing. The Band shall consider, but shall not be bound by, the recommendations of the Court. The Band's final sanction order shall be issued within ten working days from the Court's recommendation and the appellant must be notified immediately of the Band's final sanction order.

(3) When a license holder appeals a suspension or revocation, the license holder continues to be prohibited from operation of the program. A timely appeal shall stay payment of the fine until the Band issues a final sanction order.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1720

### **§ 1721. Fine Schedule**

(a) Fines shall be assessed as follows (subject to amendment by Band Ordinance):

(1) The license holder shall forfeit \$1,000 for each determination of maltreatment of a child for which the license holder is determined responsible for the maltreatment;

(2) The license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child, and failure to submit a background study; and

(3) The license holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those subject to a \$1,000 or \$200 fine above.

(b) For purposes of this section, "occurrence" means each violation identified in the Band's fine order.

(c) When a fine has been assessed, the license holder may not avoid payment by closing, selling, or otherwise transferring the program to a third party. In such an event, the license holder will be personally liable for payment. In the case of a corporation, each controlling individual is personally and jointly liable for payment.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1721

### **§ 1722. Granting subsequent license**

(a) A license holder and each controlling individual of a license holder whose license has been revoked because of noncompliance with applicable law or rule must not be granted a license for five years following the revocation.

(b) An applicant whose application was denied must not be granted a license for two years following a denial, unless the applicant's subsequent application contains new information which constitutes a substantial change in the conditions that caused the previous denial.

**Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1722

**§ 1723. License or certification fee**

(a) Drop-in center programs with a licensed capacity shall pay an annual nonrefundable license or certification fee based on the following schedule (subject to amendment by Band Ordinance):

Licensed Capacity	License/certification Fee
1 to 24 persons	\$225
25 to 49 persons	\$340
50 to 74 persons	\$450
75 to 99 persons	\$565
100 to 124 persons	\$675
125 to 149 persons	\$900
150 to 174 persons	\$1,050
175 to 199 persons	\$1,200
200 to 224 persons	\$1,350
225 or more persons	\$1,500

(b) The Band will not issue a license or certification until the license or certification fee is paid. The license or certification fee is due from the license holder upon initial application or renewal. If the license holder fails to pay the license or certification fee upon annual renewal, the program license will expire. If a license expires, the program is no longer licensed and must not operate after the expiration date. After a license expires, if the former license holder wishes to provide licensed services, the former license holder must submit a new license application and application fee under section (a) listed above.

**Historical and Statutory Notes**

Source: Band Ordinance 31-09, § 1, Exhibit A, § 1723

**Part C**  
**Staff Requirements**

**Section**

1724. Staff Requirements

**§ 1724. Staff requirements**

(a) A drop-in child care program must be operated under the supervision of a person qualified as a director and a teacher, defined by 8 MLBSA § 1445 and § 1446.

(b) A drop-in child care program must have at least two persons on staff whenever the program is operating.

(c) Children that are younger than age 2-1/2 must be in a separate group. This group must be cared for in an area that is physically separated from older children.

(d) A drop-in child care program must maintain a minimum staff ratio for children age 2-1/2 or greater of one staff person for each ten children.

(e) The drop-in child care program will have additional staff on call as a mandatory condition of their employment. The minimum child-to-staff ratio may not be exceeded and no more children may be admitted to the Facility until additional staff has arrived.

(f) In a drop-in child care program, the minimum staff-to-child ratio for infants up to 16 months of age is one staff person for every four infants. The minimum staff-to-child ratio for children age 17 months to 30 months is one staff for every seven children.

(g) In drop-in care programs that serve infants and older children, children up to age 2-1/2 may be supervised by assistant teachers, as long as other staff are present in appropriate ratios (see 8 MLBSA § 1447 for qualifications).

(h) The minimum staff distribution pattern for a drop-in child care program serving children age 2-1/2 or greater is: the first staff member must be a teacher; the second, third, and fourth staff members must have at least the qualifications of a child care aide; the fifth staff member must have at least the qualifications of an assistant teacher; the sixth, seventh, and eighth staff members must have at least the qualifications of a child care aide; and the ninth staff person must have at least the qualifications of an assistant teacher (see 8 MLBSA § 1447 for qualifications).

(i) A drop-in child care program may care for siblings 16 months or older together in any group, when the program is serving 20 children or less; however all staffing requirements of this sub-chapter must be maintained at all times. For purposes of this

subdivision, sibling is defined as sister or brother, half sister or half brother, or stepsister or stepbrother.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1724

#### **Part D Health and Safety**

##### **Section**

- 1725. Reduction of Risk of Sudden Infant Death Syndrome
- 1726. Reporting Requirements
- 1727. Crib Safety Requirements
- 1728. Federal Protection Guidelines
- 1729. Behavior Guidance
- 1730. Exclusion of sick children
- 1731. Emergency and accident policies and records
- 1732. Mandatory reporting
- 1733. Other reporting
- 1734. Additional health and safety requirements
- 1735. Facility

#### **§ 1725. Reduction of Risk of Sudden Infant Death Syndrome**

When a license holder is placing an infant to sleep, the license holder must place the infant on the infant's back, unless the license holder has documentation from the infant's parent directing an alternative sleeping position for the infant, and must place the infant in a crib with a firm mattress. The license holder must not place pillows, quilts, comforters, sheepskin, pillow-like stuffed toys, or other soft products in the crib with the infant. Licensed child care providers must meet the crib requirements under § 1727 of this Title.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1725

#### **§ 1726. Reporting Requirements**

(a) All licensed child care providers must develop policies and procedures for reporting suspected child maltreatment and must develop policies and procedures for reporting complaints about the operation of a child care program. The policies and procedures must include the telephone numbers of the local child protection agency for reporting suspected maltreatment and local law enforcement.

(b) The policies and procedures required in paragraph (a) must be made available upon request.

(c) A child care license must include a statement that informs parents who have concerns about their child's care that they may call the licensing entity. The Band shall

print the telephone number for the Band in bold and large font on the license issued to child care providers.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1726

#### **§ 1727. Crib Safety Requirements**

(a) The license holder should access and consult United States Consumer Product Safety Commission Web site for crib safety information. Annually, from the date printed on the license, all license holders shall check all their cribs' brand names and model numbers against the United States Consumer Product Safety Commission Web site listing of unsafe cribs and shall maintain written documentation for inspection for each crib showing that the review has been completed.

(b) All license holders must maintain the following documentation for every crib used by or that is accessible to any child in care:

(1) the crib's brand name; and

(2) the crib's model number; and

(3) the crib was not identified as unsafe on the United States Consumer Product Safety Commission Web site or the license holder has taken the action directed by the United States Consumer Product Safety Commission to make the crib safe.

(c) Any crib for which the license holder does not have the documentation required under paragraphs (a) and (b) must not be used by or be accessible to children in care.

(d) Documentation of the review completed under this subdivision shall be maintained by the license holder on site and made available to parents of children in care, the Band, and Indian Health Service.

(e) On at least a monthly basis, the license holder shall perform safety inspections of every crib used by or that is accessible to any child in care, and must document compliance with current Minnesota crib requirements (as stated in the most current MN statutes).

(f) Upon discovery of any unsafe condition identified by the license holder during the safety inspection, the license holder shall immediately remove the crib from use and ensure that the crib is not accessible to children in care, and as soon as practicable, but not more than two business days after the inspection, remove the crib from the area where child care services are routinely provided for necessary repairs or to destroy the crib.

(g) Documentation of the inspections and actions taken with unsafe cribs required shall be maintained on site by the license holder and made available to parents of children in care, the Band, and Indian Health Service.

(h) The Band may issue a licensing action if a license holder fails to comply with the requirements of this section.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1727

### **§ 1728. Federal Protection Guidelines**

Indian Health Service will inspect the license holder's facility for compliance with the Nation Fire Protection Association's Uniform Fire Code and Life Safety Code. Any inspection fees are the license holder's responsibility.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1728

### **§ 1729. Behavior Guidance**

(a) The applicant must develop written behavior guidance policies and procedures, and the license holder must see that the policies and procedures are carried out. The policies and procedures must:

- (1) ensure that each child is provided with a positive model of acceptable behavior;
- (2) be tailored to the developmental level of the children the center is licensed to serve;
- (3) redirect children and groups away from problems toward constructive activity in order to reduce conflict;
- (4) teach children how to use acceptable alternatives to problem behavior in order to reduce conflict;
- (5) protect the safety of children and staff persons; and
- (6) provide immediate and directly related consequences for a child's unacceptable behavior.

(b) The license holder must have written procedures for dealing with persistent unacceptable behavior that requires an increased amount of staff guidance and time. The procedures must specify that staff:

(1) observe and record the behavior of the child and staff response to the behavior; and

(2) address the behavior with the child's parent and with other staff persons and professionals when appropriate.

(c) The license holder must have and enforce a policy that prohibits the following actions by or at the direction of a staff person:

(1) Subjection of a child to corporal punishment. Corporal punishment includes, but is not limited to, rough handling, shoving, hair pulling, ear pulling, shaking, slapping, kicking, biting, pinching, hitting, and spanking.

(2) Subjection of a child to emotional abuse. Emotional abuse includes, but is not limited to, name calling, ostracism, shaming, making derogatory remarks about the child or the child's family, and using language that threatens, humiliates, or frightens the child.

(3) Separation of a child from the group, beyond time-out for a short period of time.

(4) Punishment for lapses in toilet habits.

(5) Withholding food, light, warmth, clothing, or medical care as a punishment for unacceptable behavior.

(6) The use of physical restraint other than to physically hold a child when containment is necessary to protect a child or others from harm.

(7) The use of mechanical restraints, such as tying.

(d) If a child's behavior threatens the well being of the child or other children in the center, the license holder must contact the parent(s), guardian(s), or emergency contact(s) to immediately pick up a child.

(e) Any incidents that require removal of a child from the drop-in child care center must be noted on a daily log. The license holder must ensure that notation in the log includes the child's name, staff person's name, time, date, and information indicating what less intrusive methods were used to guide the child's behavior and how the child's behavior continued to threaten the well being of the child or other children in care.

(f) In the event the removal of a child from the drop-in child care center is necessary and the parent(s), guardian(s), or emergency contact(s) failed to immediately pick up the child, the license holder will note this information in a log to be maintained in the center's administrative records.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1729

#### **§ 1730. Exclusion of sick children**

(a) A child with any of the following conditions or behaviors is a sick child and must be excluded from the center. If the child becomes sick while at the center, the child must be isolated from other children in care and the parent(s), guardian(s), or emergency contact(s) called immediately. A sick child must be supervised at all times. The license holder must exclude a child:

(1) with chicken pox until the child is no longer infectious or until the lesions are crusted over;

(2) who has vomited two or more times since admission that day;

(3) who has had three or more abnormally loose stools since admission that day;

(4) who has contagious conjunctivitis or pus draining from the eye;

(5) who has a bacterial infection such as streptococcal pharyngitis or impetigo and has not completed 24 hours of antimicrobial therapy;

(6) who has unexplained lethargy;

(7) who has lice, ringworm, or scabies that is untreated and contagious to others;

(8) who has a 100 degree Fahrenheit axillary or higher temperature of undiagnosed origin before fever reducing medication is given;

(9) who has an undiagnosed rash or a rash attributable to a contagious illness or condition;

(10) who has significant respiratory distress;

(11) who is not able to participate in child care program activities with reasonable comfort; or

(12) who requires more care than the program staff can provide without compromising the health and safety of other children in care.

(b) The license holder must post or give a notice to the parents of exposed children the same day a parent notifies the center of a child's illness or condition a contagious reportable disease, or lice, scabies, impetigo, ringworm, or chicken pox.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1730

#### **§ 1731. Emergency and accident policies and records**

(a) The applicant must develop written policies governing emergencies, accidents, and injuries. The license holder must ensure that written records are kept about incidents, emergencies, accidents, and injuries that have occurred.

(b) The license holder must keep a record of instruction to all staff persons about how to carry out the policies.

(c) The policies must contain:

(1) Procedures for administering first aid.

(2) Safety rules to follow in avoiding injuries, burns, poisoning, choking, suffocation, and traffic and pedestrian accidents.

(3) Procedures for the daily inspection of potential hazards.

(4) Procedures for fire prevention and procedures to follow in the event of a fire, identifying primary and secondary exits, building evacuation routes, the phone number of the fire department, persons responsible for the evacuation of children, and areas for which they are responsible and instruction on how to use a fire extinguisher and how to close off the fire area.

(5) Procedures to follow in the event of a blizzard, tornado, or other natural disaster.

(6) Procedures to follow when a child is missing.

(7) Procedures to follow if an unauthorized person or a person who is incapacitated or suspected of abuse attempts to pick up a child or if no one comes to pick up a child.

(8) Procedures for recording accidents, injuries, and incidents involving a child enrolled in the center. The written record must contain the

name and age of the persons involved; date and place of the accident, injury, or incident; type of injury; action taken by staff; and to whom the accident, injury, or incident was reported.

(9) Procedures mandating an annual analysis of the license holder's records and procedures and any modification of the center's policies based on the analysis.

(d) The license holder must maintain a written record of accidents, injuries, emergencies, and incidents.

(e) The license holder must develop procedures to address when the parent(s), guardian(s), or emergency contact(s) fail(s) to pick up a child upon the closing of the child care center, if child must be removed from the center as described in §§1729(d) and 1730(b). Furthermore, the license holder will note this information in a log to be maintained in the license holder's administrative records.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1731

#### **§ 1732. Mandatory reporting**

The license holder must report neglect, physical or sexual abuse of children in the home, school, or community setting.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1732

#### **§ 1733. Other reporting**

(a) The license holder must inform law enforcement immediately of the death of a child in care in the center; the Band must be notified within 24 hours.

(b) The license holder must inform the Band within 24 hours of any injury to a child in care in the center that required treatment by a physician.

(c) The license holder must inform the Band within 48 hours of the occurrence of a natural disaster during the hours of operation.

(d) The license holder must ensure that the appropriate health authority is notified within 24 hours of receiving the parent's report of any suspected case of reportable disease as specified in the current Minnesota regulations governing child care centers (as stated in the most current Minnesota Rules).

#### **Historical and Statutory Notes**

**§ 1734. Additional health and safety requirements**

- (a) A license holder for a drop-in center program will not administer medicine.
- (b) The indoor space and equipment of the center must be clean and disinfected daily and as needed.
- (c) The toilet rooms of the center must be cleaned daily. Toilet training chairs must be emptied, washed with soap and water, and disinfected after each use. Toilets and seats must be washed with soap and water and disinfected when soiled or at least daily.
- (d) A diaper must be changed only in the diaper changing area. The diaper changing area must be separate from areas used for food storage, food preparation, and eating. The area must have a hand sink equipped with hot and cold running water within three feet of the diaper changing surface, a smooth nonabsorbent diaper changing surface and floor covering, and a sanitary container for soiled and wet diapers.
- (e) The center must have and follow diaper changing procedures that have been developed in consultation with a health consultant. The license holder must post the diaper changing procedures in the diaper changing area.
- (f) A child's hands must be washed with soap and water after a diaper change, after use of a toilet or toilet training chair, and before eating a meal or snack. Staff must monitor hand washing and assist a child who needs help. The use of a common basin or a hand sink filled with standing water is prohibited.
- (g) A staff person must wash his or her hands with soap and water after changing a child's diaper, after using toilet facilities, and before handling food or eating.
- (h) The license holder shall provide the following supplies and make them accessible to children: toilet paper, liquid hand soap, facial tissues, and single use paper towels or warm air hand dryers.
- (i) The license holder must ensure that a first aid kit is available within the center. The kit must contain sterile bandages and band-aids, sterile compresses, scissors, an ice bag or cold pack, an oral or surface thermometer, and adhesive tape. A current first aid manual must be included. The first aid kit and manual must be accessible to the staff in the center.
- (j) Sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.
- (k) The center must have a battery operated flashlight and battery operated portable radio.

(l) Equipment and furniture must be durable, in good repair, structurally sound and stable following assembly and installation. Equipment must be free of sharp edges, dangerous protrusions, points where a child's extremities could be pinched or crushed, and openings or angles that could trap part of a child's body. Tables, chairs, and other furniture must be appropriate to the age and size of children who use them. Toys and equipment that are likely to be mouthed by infants and toddlers must be made of a material that can be disinfected. These must be cleaned and disinfected when mouthed or soiled and at least daily.

(m) Infant rattles must meet the United States consumer product safety standards contained in the Code of Federal Regulations, title 16, sections 1510.1 to 1510.4, as adopted on May 23, 1978. All toys and other articles intended for use by children under three years of age that present choking, aspiration, or ingestion hazards because of small parts must meet the size standards in Code of Federal Regulations, title 16, sections 1501.1 to 1501.5, as adopted on June 15, 1979.

(n) The areas used by children must be free from debris, loose flaking, peeling, or chipped paint, loose wallpaper, or crumbling plaster, litter, and holes in the walls, floors, and ceilings. Rugs must have a nonskid backing or be firmly fastened to the floor and be free from tears, curled or frayed edges, and hazardous wrinkles.

(o) Food and water must meet and comply with IHS standards.

(p) Any play equipment that has tubing, tunnels or otherwise prevents monitoring and observation of activity occurring inside the structure must have walls that are partially or completely transparent, or allow for surveillance of the structure's interior.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1734

#### **§ 1735. Facility**

(a) If the Band has reasonable cause to believe that a potential hazard exists, the Band may request another inspection and written report by a fire marshal, building official, or health authority to verify the absence of hazard, the fees for which the license holder is responsible.

(b) Radiators, fireplaces, hot pipes, and other hot surfaces in areas used by children must be shielded or insulated to prevent burns.

(c) Except in a center that serves only school-age children, electrical outlets must be tamper proof or shielded when not in use.

(d) A minimum temperature of 68 degrees Fahrenheit must be maintained in indoor areas used by children.

(e) Kitchens, stairs, and other hazardous areas must be inaccessible to children except during periods of supervised use.

(f) Fire extinguishers must be serviced annually by a qualified inspector. The name of the inspector and date of the inspection must be written on a tag attached to the extinguisher.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1735

#### **Part E Records**

##### **Section**

1736. Personnel records

1737. Child records

1738. Center administrative records

#### **§ 1736. Personnel records**

The license holder must ensure that a personnel record for each staff person is maintained at the center. The personnel record for each staff person must contain:

(a) the staff person's name, home address, home telephone number, and date of birth;

(b) the staff person's documentation indicating that the staff person meets the requirements of the staff person's job position and the education and experience requirements specified by this subchapter; and

(c) documentation that the staff person has completed first aid and CPR training.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1736

#### **§ 1737. Child records**

(a) At the time of enrollment in the center, the license holder must ensure that a record is maintained on each child. The record must contain:

(1) the child's full name, birthdate, and current home address;

(2) the name, address, and telephone number of the child's parent(s) or legal guardian(s);

(3) instructions on how the parent(s) or guardian(s) can be reached when the child is attending the center;

(4) the names and telephone numbers of any persons authorized to take the child from the center;

(5) written authorization for the license holder to act in an emergency, or when a parent cannot be reached or is delayed;

(6) for children age six weeks to 36 months, a description of the child's eating, sleeping, toileting, and communication habits, and effective methods for comforting the child; and<sup>4</sup>

(7) documentation of any dietary or medical needs of the child.<sup>5</sup>

(8) documentation of parent(s) or guardian(s) failing to pick up the child.

(b) The license holder shall not disclose a child's record to any person other than the child, the child's parent or guardian, the child's legal representative, employees of the license holder, the Band, and law enforcement unless the child's parent or guardian has given written consent or as otherwise required by law.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1737

#### **§ 1738. Center administrative records**

All records, policies, and procedures required by this subchapter must be maintained within the center and be available for inspection at the request of the Band or IHS.

#### **Historical and Statutory Notes**

**Source:** Band Ordinance 31-09, § 1, Exhibit A, § 1738

## **CHAPTER 12**

### **CHILD SUPPORT**

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<sup>4</sup> So in original. Probably should omit "and".

<sup>5</sup> So in original. Probably should be "; and".

<b>Subchapter</b>	<b>Section</b>
<b>I. General Provisions</b>	<b>2001</b>
<b>II. Enforcement</b>	<b>2051</b>

## **SUBCHAPTER I**

### **GENERAL PROVISIONS**

**Section**

- 2001. Purpose.
- 2002. Sovereign immunity.
- 2003. Definitions.
- 2004. Confidentiality.
- 2005. Scope of proceedings.
- 2006. Guidelines.
- 2007. Joint custody-Custody divided by time periods between two parents.
- 2008. Joint custody-Children divided between two parents.
- 2009. Stoppage of payments.
- 2010. Scheduling of cases.
- 2011. Forms.
- 2012. Court fees.
- 2013. Notice.
- 2014. Income verification.
- 2015. Court hearing.
- 2016. Information to verify income or financial circumstances.
- 2017. Lifestyle or morals of obligee.
- 2018. Orders.
- 2019. Modification of order.

#### **Historical and Statutory Notes**

The Preamble of Ordinance 26-94 provides: " Be it enacted by the Band Assembly of the Mille Lacs Band of Chippewa Indians for the purpose of establishing Child Support and Enforcement for adequate support and nurturing of the children under the jurisdiction of the Band."

#### **Cross References**

Removal of child from proposed adoptive home, support orders, see 8 MLBSA § 617.

#### **§ 2001. Purpose**

- (a) The Band Assembly hereby finds and determines that the purpose of this chapter is to provide for the adequate support and nurturing of the children under the jurisdiction of the Band. The health and well-being of the Band depends on the continued health and well-being of our children. The healthy growth, development and well-being of the children requires

proper care and support be given them in their homes. To this end this chapter is enacted.

(b) All provisions in this chapter are to be interpreted with the best interests of the child in mind.

#### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, ch. 29, T. I, § 1.

### **§ 2002. Sovereign immunity**

Nothing contained in this chapter shall be construed as a waiver of sovereign immunity of the Non-Removable Mille Lacs Band of Chippewa Indians unless specifically authorized in accordance with Band law or by specific Band Statute.

#### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. II, § 9.

### **§ 2003. Definitions**

#### **(a) Adjusted income.**

(1) The amount of income used as a base for figuring child support. In figuring adjusted income, the Court shall start by determining the gross income of the parent owing child support, including income from earnings and investments. The following expenses are then deducted to determine the adjusted income:

(A) Federal income taxes using a standard tax table amount.

(B) State income tax, if any.

(C) Social security deductions.

(D) Pension deductions not exceeding ten percent of gross wages.

(E) Union dues.

(F) Cost of health insurance coverage for obligor and dependents.

(G) A child support or maintenance order currently being paid.

(H) Compensation for overtime, if it is worked only occasionally.

(2) Income of the spouse of the person owing child support will not be counted when determining the amount of child support owed. The voluntary giving of gifts or purchasing of food, clothing and the like shall not reduce the amount of child support owed.

(3) Persons who voluntarily quit their jobs, or voluntarily reduce their work hours shall not be able to reduce their child support obligations. The Court shall presume that their income is what it would have been if they had not voluntarily quit or reduced their work.

**(b) Children.**

(1) "Children" for purposes of determining payment amount means the minor offspring or adopted children of the person obligated to pay, or who otherwise becomes emancipated.

(2) It is assumed that support will stop when the child is eighteen years old unless one of the following applies:

(A) the child is disabled, or

(B) the child is between eighteen and twenty-one and is enrolled in school on a full time basis.

(3) If subparagraph (A) or (B) of paragraph (2) applies, and if the Court finds that it would be in the best interests of the child to continue support, the Court may order that support continue until the child is twenty-one, so long as the child is disabled or enrolled in school on a full time basis.

**Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. I, § 4.04.

**§ 2004. Confidentiality**

(a) All child support proceedings in court are confidential.

(b) Court hearings in the matter of child support will be closed to outside observers. Only the parties directly involved and necessary witnesses shall be present.

(c) Proceedings should not be discussed with the children involved or other children in the household. Parents are to refrain from using their child or children as tools against each other.

**Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. I, § 2.

**Cross References**

Disclosure by judge of information relating to pending case, see 5 MLBSA § 117.

**§ 2005. Scope of proceedings**

In making determinations of child support, enforcement of child support, or modifying support orders, the court shall not change or modify the custody or guardianship of any child. A separate proceeding must be initiated to change or modify custody or guardianship.

**Historical and Statutory Notes**

**Source:** Ordinance 26-94, ch. 29, T. I, § 3.

**§ 2006. Guidelines**

The Court shall follow the accompanying chart in awarding child support. Any deviation from the chart must be accompanied by an explanation in the written order which explains why the deviation is in the child's best interests. Specific dollar amounts, not income percentages, shall be included in the child support order.

**Chart for Child Support Amounts**

Adjusted Income  
Per Month of  
Person owing  
support

Number of Children and percent of adjusted income owed

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7 or more</u>
\$401-500	14	17	20	22	24	26	28

\$501-550	15	18	21	24	26	28	30
\$551-600	16	19	22	25	28	30	32
\$601-650	17	21	24	27	29	32	34
\$651-700	18	22	25	28	31	34	36
\$701-750	19	23	27	30	33	36	38
\$751-800	20	24	28	31	35	38	40
\$801-850	21	25	29	33	36	40	42
\$851-900	22	27	31	34	38	41	44
\$901-950	23	28	32	36	40	43	46
\$951-1000	24	29	34	38	41	45	48
over \$1000	25	30	35	39	43	47	50

**Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. I, § 4.

**§ 2007. Joint custody-Custody divided by time periods between two parents**

The rebuttable presumption is that child support will not be reduced because custody of the child is joint. Support will be awarded to the parent who has the child the majority of the time, in the amount as set forth in the guidelines.

**Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. I, § 4.01.

**§ 2008. Joint custody-Children divided between two parents**

The rebuttable presumption is that all children will be in the primary care of one of the parents. However if there is more than one child, and custody is joint between the parents with each parent having primary responsibility for at least one child, then the amount that each would owe is calculated separately. The two figures are then compared, and the lower figure is subtracted from the higher figure to determine the amount of support owed.

**Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. I, § 4.03.

## **§ 2009. Stoppage of payments**

On a case by case basis, the Court may order that child support payments be stopped or reduced, during the time that the child is on an extended visit of 30 days or more with the non-custodial parent, if the Court specifically finds that such stoppage or reduction in support will not adversely affect the child's best interests. A reduction or stoppage in support payments is not automatic or presumed, and the judge in determining whether to allow a reduction for an extended visit should consider the extent of obligations and expenses of the custodial parent. (For example, housing costs are ongoing and do not diminish due to a temporary absence of the child.)

### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. I, § 4.02.

## **§ 2010. Scheduling of cases**

Because support payments are vital to the well being of the children, support proceedings shall be given priority in the scheduling of cases.

### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. I, § 5.01.

## **§ 2011. Forms**

(a) The Court shall prepare simplified forms for the petitioning for child support.

(b) The Court shall prepare forms so that the parties may easily calculate the amount of child support.

(c) The Court shall prepare forms so that the party who owes child support may petition the Court for a modification, if he or she has a substantial change of circumstances such as, but not limited to, an involuntary layoff from work. Any such order modifying support shall be issued only upon a finding by the Court that there has been a substantial change of circumstances.

### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, ch. 29, T. I, §§ 5.02 to 5.04.

## **§ 2012. Court fees**

Court fees are waived for the filing of child support petitions. However petitions for modification in orders for support shall pay the required court fees.

**Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. I, § 5.02.

**§ 2013. Notice**

All parties to a child support action shall receive notice of the proceeding at least 10 days before the Court hearing.

**Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. I, § 5.06.

**§ 2014. Income verification**

Included with the notice shall be forms requesting income verification. All parties must provide income verification to the Court, or notify the Court in writing of any reason that they think that the child support is not owed.

**Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. I, § 5.07.

**§ 2015. Court hearing**

All persons subject to the jurisdiction of the Band who are being petitioned for child support are entitled to a hearing. The Judge shall consider all relevant evidence presented and within 48 hours, following the hearing issue a written order.

**Historical and Statutory Notes**

**Source:** Ordinance 26-94, ch. 29, T. I, § 6.

**§ 2016. Information to verify income or financial circumstances**

If necessary the Judge may order the parties to supply further information to verify the income or financial circumstances of the parties.

**Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. I, § 6.91.

### **§ 2017. Lifestyle or morals of obligee**

The lifestyle or morals of the other parent (obligee) shall not be a defense against paying child support.

#### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. I, § 5.071.

### **§ 2018. Orders**

(a) Every order for support shall include the obligor's social security number, and the name and address of the obligor's employer(s) or other payer of funds.

(b) Every order for child support shall provide for a conspicuous notice of the provisions of subchapter II (8 MLBSA § 2051 et seq.). An order without this notice remains subject to subchapter II.

(c) The child support order issued by the Court shall contain a prominent notice that in the event of an involuntary layoff from work the party is required to notify the Court when returning to work at the former place of employment or a new place of employment. Failure to notify the Court may result in a civil penalty not to exceed \$500 plus the assessment of arrearages.

(d) Child support orders issued from the Court shall include a provision requiring health insurance for the children when coverage is available through the employer of the individual paying child support.

#### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. I, §§ 5.05, 5.08, Title II, §§ 1, 2.05.

### **§ 2019. Modification of order**

The obligor may move the Court under this chapter to modify the order respecting the amount of child support.

#### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, Title II, § 2.04.

## **SUBCHAPTER II**

### **ENFORCEMENT**

#### **Section**

- 2051. Withholding.
- 2052. Conditions of income withholding.
- 2053. Withholding hearing.
- 2054. Effect of order.
- 2055. Priority.
- 2056. Employer expenses.
- 2057. Notice from obligor to employer.
- 2058. Notice to Court upon termination of employment.
- 2059. Order terminating income withholding.

#### **Cross References**

Orders for child support, notice of provisions of this subchapter see 8 MLBSA § 2018.

#### **§ 2051. Withholding**

Whenever an obligation for support of a child is determined or ordered by the Court of Central Jurisdiction, the amount of child support, as determined by Court order, must be withheld from the income, regardless of the source, of the person obligated to pay the support.

#### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, ch. 29. T. II, § 1.

#### **§ 2052. Conditions of income withholding**

(a) Withholding shall result whenever the obligor fails to make the support payments, and the following conditions are met:

- (1) the obligor is at least 30 days in arrears; and
- (2) the obligee or a public authority serves written notice of income withholding, showing arrearage, on the obligor at least 20 days before service of the notice of income withholding and a copy of the Court's order on the employer or payer of funds; and

(3) within the 20 day period, the obligor fails to request and move the Court to deny withholding on the grounds that an arrearage of at least 30 days does not exist as of the date of the notice of income withholding, or a mistake or facts, if the order was issued ex parte; and

(4) the obligee or public authority serves a copy of the notice of income withholding, a copy of the court's order, and the provisions of this subchapter on the employer or payer of funds;

(b) The obligor may, at any time, waive the written notice required by this subchapter.

#### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. II, §§ 2.01, 2.03.

### **§ 2053. Withholding hearing**

Within 30 days from the date of the notice given under 8 MLBSA § 2052, the Court shall hold a hearing on the motion of the obligor and notify the parties of its decision. At the hearing to deny or change the withholding, if the Court finds that there was not a mistake of fact, the Court shall order income withholding to begin no later than the first pay period that occurs after 14 days following the date of the hearing. If the Court finds that an arrearage of at least 30 days existed as of the date of the notice of income withholding, but finds a mistake in the amount of arrearage, the court shall order income withholding, in the corrected amount.

#### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. II, § 3.

### **§ 2054. Effect of order**

(a) Notwithstanding any law to the contrary, an order issued by the Court of Central Jurisdiction for child support is binding on the employer or payer of funds when service under this subchapter Title has been made. Withholding shall begin no later than the first pay period that occurs after 14 days following the date of the notice to the employer or payer of funds. An employer shall not discharge, or refuse to hire or otherwise discipline an employee as a result of a wage or salary withholding authorized by this subchapter.

(b) To pay the arrearage specified in the notice of income withholding, the employer or payer of funds shall withhold from the obligor's income an additional amount not to exceed 20 percent of the monthly obligation until the arrearage is paid.

(c) If the amounts currently owed exceed the maximum permitted by law the employer shall not withhold from an employee more than the maximum permitted under the Consumer Credit Protection Act, 15 U.S.C. section 1 673(b)(2).

#### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. II, §§ 2.02, 4, 5.02.

### **§ 2055. Priority**

(a) An order for withholding under this chapter or execution or garnishment upon a judgment for child support arrears shall have priority over an attachment, execution, garnishment, or wage assignment and shall not be subject to the statutory limitations on amounts levied against the income of the obligor, except as provided for in this chapter. Amounts withheld from an employee's income shall not exceed the maximum permitted by law.

(b) In the event that there is more than one withholding order for child support on an employee, the employer shall put the orders into effect, giving priority first to amounts currently due and not in arrears up to the maximum amount allowed by law. If there are two or more orders for child support which cumulatively exceed the maximum allowed by law, the amount each obligee receives from the withholding shall be determined as the amount equal to the number of children as a percentage of the total number of children who are owed support giving priority first to the judgment issued first. This subsection shall not affect the actual amount of support ordered, it only pertains to withholdings.

#### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. II, § 5.

### **§ 2056. Employer expenses**

An employer may deduct two dollars from the obligor-employee's remaining salary for each payment made pursuant to a withholding order under this subchapter to cover the employer's expenses involved in the withholding.

### **Historical and Statutory Notes**

**Source:** Ordinance 2-94, Ch. 29, T. II, § 6.

### **§ 2057. Notice from obligor to employer**

When an individual is hired for employment, the employer shall request that the individual disclose whether or not the individual has court ordered child support obligations that are required by law to be withheld from income and the terms of the court order. The individual shall disclose this information at the time of hiring. When an individual discloses that the individual owes child support that is required to be withheld, the employer shall begin withholding according to the terms of the order and under this chapter.

### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. II, § 7.

### **§ 2058. Notice to Court upon termination of employment**

When withholding is in effect and the obligor's employment is terminated, the obligor and the obligor's employer or payer of funds shall notify the Court and the obligee or public agency responsible for child support enforcement of the termination within ten days of the termination date. The notice shall include the obligor's home address and the name and address of the obligor's new employer or payer of funds, if known. Information disclosed under this subchapter shall not be divulged except to the extent necessary for the administration of child support or when authorized by law.

### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, Ch. 29, T. II, § 7.01.

### **§ 2059. Order terminating income withholding**

Whenever an obligation for child support terminates under the terms of the order, and where the obligation is enforced by income withholding from the obligor, the Court shall enter an order directed to the obligor's employer or other payer of funds, which terminates the income withholding. The order terminating income withholding must specify the effective date of the order, referencing the initial order or decree establishing the support obligation.

### **Historical and Statutory Notes**

**Source:** Ordinance 26-94, ch. 29, T. II, § 8.

## Chapter 13

### CHILD / FAMILY PROTECTION

#### Subchapter

1. General Provisions
2. Children's Court
3. Child Abuse and Neglect
4. Foster Home Licensing Procedures
5. Guardianship
6. Adoptions

Sect

3

3

3

3

3

3

#### Historical and Statutory Notes

The preamble of Band Ordinance 01-96 provides:

for the purpose of amending Band Statute 1096 - MLC - 28."

"Be it enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Ojibwe Indians

### Subchapter 1 General Provisions

#### Section

- |       |                                   |
|-------|-----------------------------------|
| 3101. | Title of Chapter                  |
| 3102. | Purpose                           |
| 3103. | Definitions                       |
| 3104. | Child / Family Protection Records |

#### § 3101. Title of Chapter

This chapter shall be entitled "The Child / Family Protection Statute".

#### Historical and Statutory Notes

#### Source:

Band Ordinance 01-96, § 1A.

#### § 3102. Purpose

This subchapter shall be liberally interpreted and construed to fulfill the following expressed purposes:

(a) to provide for the welfare, care and protection of the children and families under the jurisdiction of the Mille Lacs Band;

(b) to preserve unity of the family, preferably by separating the child from his / her parents only when necessary;

(c) to take such actions as may be necessary and feasible to prevent the abuse, neglect or abandonment of children;

(d) to provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives;

(e) to secure the rights of and ensure fairness to the children, parents, guardians, custodians or other parties who come before the children's court under the provisions of this chapter;

(f) to ensure that off-reservation courts will be willing to return Mille Lacs Band children to us by establishing this chapter;

(g) to recognize and acknowledge the customs and traditions of the Mille Lacs Band with regards to child-rearing.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 1.

### **§ 3103. Definitions**

As used in this chapter:

(a) **“Abandonment”** means the failure of the parent, guardian or custodian to provide reasonable support and to maintain regular contact with a child. Failure to maintain a normal parental relationship with the child without just cause for a period of six (6) months shall constitute prima facie evidence of abandonment. Custody with extended family members or voluntary consent to placement does not constitute abandonment.

(b) **“Abuse”** means the infliction of physical, emotional or mental injury on a child, or sexual exploitation of a child and shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that his health, moods or emotional well-being is endangered.

(c) **“Adult”** means a person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.

(d) **“Child”** means a person who is less than eighteen (18) years old or<sup>6</sup> has not been emancipated by order of a court of competent jurisdiction.

(e) **“Child Protection Team”** means a team established to involve and coordinate the child protection services of various agencies as set forth in § 3142 of this chapter.

(f) **“Court”** or **“Children’s Court”** means the Children’s Court of the Mille Lacs Band of Chippewa Indians.

(g) **“Custodian”** means a person, other than a parent or guardian, to whom legal custody of the child has been given.

(h) **“Domicile”** means a person’s permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian consider to be their permanent home.

(i) **“Emergency Foster Home”** means placement with a family whose home has been licensed to accept emergency placements of children at any hour of the day or night (see “Foster Home”).

(j) **“Extended Family”** is defined according to the customs and traditions of the Mille Lacs Band.

(k) **“Foster Home”** means placement with a family whose home has been licensed under subchapter 4 (§§ 3171 - 3174) of this chapter.

(l) **“Foster Home Inspector”** means a person selected to inspect and license foster homes under subchapter 4 (§§ 3171 - 3174) of this chapter.

(m) **“Guardian”** means a person assigned by a court of competent jurisdiction, other than a parent, having the duty and authority to provide care and control of a child (see “Permanent Guardian,” “Temporary Guardian,” “Guardian Ad Litem,” and “Guardian of Property”).

(n) **“Guardian Ad Litem”** means a person appointed by the court to represent the child’s interests before the court.

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<sup>6</sup> So in original. Probably should be “and”.

(o) **“Guardian of Property”** means a person appointed by the court to manage the property of a child or incompetent person as set forth in subchapter 5 (§§ 3201 - 3211) of this chapter.

(p) **“He”** means he or she, **“his”** means his or her, and singular includes plural.

(q) **“Incompetent”** means an insane person or person who is for any cause mentally incompetent (as defined by the court) to take care of himself and to manage his property.

(r) **“Indian”** means any member of a federally recognized Indian tribe, band or community, or Alaska Natives, or a person considered by the community to be Indian.

(s) **“Solicitor General”** means the Solicitor General or other designated person who appropriately performs the duties and responsibilities set forth in § 3122 of this chapter.

(t) **“Juvenile Offender”** means a child who commits a “juvenile offense” prior to the child’s eighteenth (18<sup>th</sup>) birthday (see Juvenile Justice Code).

(u) **“Juvenile Offense”** means a criminal violation of the Mille Lacs Band Laws which is committed by a person who is under the age of eighteen (18) at the time the offense was committed (see Juvenile Justice Code).

(v) **“Neglect”** means the failure of the parent, guardian or custodian to provide adequate food, clothing, shelter, medical care, education or supervision for the child’s health and well-being. “Neglect” shall include “abandoned” children.

(w) **“Parent”** includes a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

(x) **“Open Adoption”** means an adoption which is intended not to permanently deprive the child of connections to, or knowledge of, his or her natural family.

(y) **“Permanent Guardian”** means a guardian who has been granted long term guardianship status as set forth in § 3202 of this chapter.

(z) **“Protective Services Worker”** means the protective services worker, social services worker, law enforcement personnel or any person who performs the duties and responsibilities set forth in § 3141 of this chapter.

(aa) **“Reservation”** means the territory under the jurisdiction of the Mille Lacs Band.

(bb) **“Temporary Guardianship”** means a guardian who has been granted temporary guardianship status as set forth in subchapter 5 (§§ 3201 - 3211) of this chapter.

(cc) **“Band Assembly”** means the Legislature and Chief Executive of the Mille Lacs Band.

(dd) **“Tribal Court”** means the Court of Central Jurisdiction of the Mille Lacs Band.

(cc) **“Tribe”** means the Non-Removable Mille Lacs Band of Chippewa Indians.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 2.

### **§ 3104. Child / Family Protection Records**

(a) **Children’s Court Records.** A record of all hearings under this chapter shall be made and preserved. All Children’s Court records shall be confidential and shall not be open to inspection to any but the following:

- (1) the child;
- (2) the child’s parent, guardian or custodian;
- (3) the prospective adoptive parent(s);
- (4) the child’s counsel or guardian ad litem;
- (5) the Children’s Court personnel directly involved in the handling of the case;

(6) any other person by order of the Court, having a legitimate interest in the particular case or the work of the court.

(b) **Law Enforcement and Social Services Records.** Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement and social services records shall be confidential and shall not be open to inspection to any but the following:

- (1) the child;
- (2) the child’s parent, guardian or custodian;

- (3) the child’s counsel or guardian ad litem;
- (4) law enforcement and social services personnel directly involved in the handling of the case;
- (5) the Children’s Court personnel directly involved in the handling of the case;
- (6) any other person by order of the Court, having a legitimate interest in the particular case or the work of the court.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 28.

**Subchapter 2  
Children’s Court**

**Section**

- 3111. General Jurisdiction
- 3112. Jurisdiction Over Extended Family
- 3113. Continuing Jurisdiction
- 3114. Application of the Indian Child Welfare Act
- 3115. Transfer to State Court or Other Tribal Courts
- 3116. Transfer from Other Courts
- 3117. Full Faith and Credit, Conflict of Laws
- 3118. Rules of Procedure
- 3119. Cooperation and Grants
- 3120. Social Services
- 3121. Juvenile Counselor
- 3122. Solicitor General
- 3123. Guardian Ad Litem
- 3124. Additional Court Personnel
- 3125. Modification, Revocation or Extension of Court Orders
- 3126. Appeals
- 3127. Emancipation
- 3128. Authorization of Medical Treatment

**§ 3111. General Jurisdiction**

(a) There is hereby established for the Non-Removable Mille Lacs Band of Chippewa Indians a court to be known as the Court of Central Jurisdiction Children’s Court. The jurisdiction of the Children’s Court shall be civil in nature and shall include the right to issue all orders necessary to ensure the safety of children and incompetents within the boundaries of the

reservation, as well as other children who have been declared to be wards of the 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.

(b) The Children's Court shall have jurisdiction over the following persons:

(1) Members of the Band under the age of eighteen (18) years;

(2) Persons under the age of eighteen (18) years who are eligible to become members of the Band;

(3) Indians, as defined in § 3103(r) of this chapter, who are under the age of eighteen (18) years and who are residing within the exterior boundaries of the reservation;

(4) Children of members of the Band or other Indians, as defined in § 3103(r) of this chapter, including adopted children, who reside within the exterior boundaries of the reservation;

(5) Children residing within the exterior boundaries of the reservation, for whatever reason, in the home of a member of the Band or other Indians, as defined in § 3103(r) of this chapter, as long as the parents, guardians, or custodians have consented to the jurisdiction of the Children's Court. Such consent, once given, may be revoked only with permission of the Children's Court; and

(6) Incompetent persons residing or domiciled within the exterior boundaries of the reservation.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 3.01.

### **§ 3112. Jurisdiction Over Extended Family**

Where the Children's Court asserts jurisdiction over a person under § 3111 of this chapter, the court shall also have jurisdiction over the person's extended family whenever the court deems it appropriate.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 3.02.

### **§ 3113. Continuing Jurisdiction**

Where the Children's Court deems it appropriate, the court may retain jurisdiction over children and their extended families who leave the exterior boundaries of the reservation.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 3.03.

### **§ 3114. Application of the Indian Child Welfare Act**

The Children's Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. § 1901-1963, where they do not conflict with the provisions of this chapter. The procedures for state courts in the Indian Child Welfare Act shall not be binding upon the Children's Court unless specifically provided for in this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 3.041.

### **§ 3115. Transfer to State Court or Other Tribal Courts**

In any proceeding before the Children's Court, the court may transfer the proceedings to an appropriate state court or another tribal court where the state or the other Indian tribe have a significant interest in the child and the transfer would be in the best interests of the child.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 3.042.

### **§ 3116. Transfer from Other Courts**

(a) **In General.** The Children's Court may accept or decline, under the procedures set forth in this chapter, transfers of child welfare cases from federal, state or other tribal courts.

**(b) Procedures for Transfer from State Court**

(1) **Receipt of Notice.** The tribal agent for service of notice of state court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the Mille Lacs Band Social Service Department.

(2) **Investigation and Pre-Transfer Report by the Solicitor General.** The Band Social Services Department shall conduct an investigation and file a written report with the court within seven (7) days of receipt of notice from the Band's agent for service of notice.

(3) **Petition for Transfer.** The Band petition for transfer shall be filed by the Solicitor General within seven (7) days of receipt of recommendations from the court.

**(4) Intervention in State Court Proceedings.**

(A) The Band may intervene in state court child custody proceedings, as defined by the Indian Child Welfare Act, at any point in the proceedings, and;

(B) The Solicitor General or selected representatives may file a motion to intervene within seven (7) days of receipt of recommendations from the court.

(5) **Acceptance of Transfer:** The Children's Court will not accept a transfer from state court unless:

(A) a parent or Indian custodian's petition to state court for transfer is granted, or;

(B) the Band's petition to state court for transfer is granted, and;

(C) the Band Social Services Department's pre-transfer report recommends the acceptance of transfer, and;

(D) the Solicitor General recommends acceptance.

(6) **Hearing(s).** Upon receipt of transfer jurisdiction from state court, the **Solicitor General** shall file a child / family protection petition, and appropriate hearing(s) shall be held in accordance with this chapter.

## Historical and Statutory Notes

**Source:**

Band Ordinance 01-96, §§ 3.043, 3.044.

### § 3117. Full Faith and Credit; Conflict of Laws

(a) **State Court Orders.** State child custody orders involving children over whom the Children's Court may exercise jurisdiction may be recognized by the Children's Court only after a full independent review of such state proceedings has determined:

(1) the state court had jurisdiction over the child, and;

(2) the provisions of the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., were properly followed, and;

(3) due process was provided to all interested persons participating in the state proceedings, and;

(4) the state court proceedings does not violate the public policies, customs, or common law of the Mille Lacs Band.

(b) **Court Orders of Other Tribal Courts.** Court orders of other tribal courts involving children over whom this Children's Court could take jurisdiction shall be recognized by this Children's Court after the court has determined:

(1) that the other tribal court exercised proper subject matter and personal jurisdiction over the parties, and;

(2) due process was accorded to all interested parties participating in the other tribal court proceeding.

(c) **Mille Lacs Band Interest.** Because of the vital interest of the Band in its children and those children who may become members of the Band, the statutes, regulations, public policies, customs and common law of the Band shall control in any proceeding involving an Indian child.

## Historical and Statutory Notes

**Source:**

Band Ordinance 01-96, § 3.05.

### **§ 3118. Rules and Procedure**

The procedures in the Children's Court shall be governed by the rules of procedure for the Court of Central Jurisdiction which are not in conflict with this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 4.01.

### **§ 3119. Cooperation and Grants**

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 chapter. This authority is subject to the approval of the Band Assembly.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 4.02.

### **§ 3120. Social Services**

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 duplication and expense.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 4.03.

### **§ 3121. Juvenile Counselor**

(a) **Selection.** The Mille Lacs Band shall select juvenile counselor(s) to carry out the duties and responsibilities set forth in this chapter. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled juvenile counselors or any other title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

(b) **Qualifications.** The juvenile counselor shall have an educational background and/or

prior experience in the field of delivering social services to youth and shall never have been convicted of any offense involving child abuse, or sexual abuse of a child.

(c) **Resource Development.** The juvenile counselor shall identify and develop resources on the reservation, in conjunction with the Children’s Court and the Chief Executive and Band Assembly, to enhance each tribal child’s potential as a viable member of the community.

(d) **Duties.** The juvenile counselor shall:

(1) make investigations as provided in this chapter or as directed by the court; and

(2) make reports to the court as provided in this chapter or as directed by the Children’s Court; and

(3) provide counseling services; and

(4) perform such other duties in connection with the care, custody or transportation of children as the court may require.

(e) **Prohibited Duties.** The juvenile counselor shall not be employed as or be required to perform the duties of a prosecutor or law enforcement official.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 5.01.

### **§ 3122. Duties of the Solicitor General**

The Solicitor General shall:

(a) File petitions with the court as provided in this chapter;

(b) Represent the Mille Lacs Band in all proceedings under this chapter; and

(c) Perform such other duties as the court may order.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 5.02.

### **§ 3123. Guardian ad Litem**

At any stage of the proceedings conducted under this chapter the Children's Court may appoint separate counsel for the child, without affecting the right to counsel of the parents, guardians or other legal custodians, to act as guardian ad litem representing the child's best interests.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 5.03.

### **§ 3124. Additional Court Personnel**

The court may set qualifications and appoint additional juvenile court personnel such as guardians ad litem, court appointed special advocates, Children's Court advocates, whenever the court decides that it is appropriate to do so.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 5.04.

### **§ 3125. Modification, Revocation or Extension of Court Orders**

(a) The Court may hold a hearing to modify, revoke or extend a court order under this chapter at any time upon the motion of:

- (1) the child;
- (2) the child's parent, guardian or custodian;
- (3) the prospective adoptive parent(s) upon court order;
- (4) the child's counsel or guardian ad litem;
- (5) the Solicitor General;
- (6) the institution, agency, or person vested with the legal custody of the child or responsibility for protective supervision, or;
- (7) the court on its own motion.

(b) Any hearing to modify, revoke or extend a Court order shall be held in accordance with the procedures established for the order at issue.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 27.

### **§ 3126. Appeals**

(a) Any party to a Children's Court hearing may appeal a final Children's Court order.

(b) Any party seeking to appeal a final Children's Court order shall file a written notice of appeal with the court within thirty (30) days of the final order.

(c) For purposes of appeal, a record of proceedings shall be made available to the child, his parent, guardian or custodian, the child's counsel and others upon court order. Costs of obtaining this record shall be paid by the party seeking the appeal.

(d) A Court order may be stayed by such appeal.

(e) All appeals shall be conducted in accordance with Band Statute and Court of Central Jurisdiction rules of procedure as long as those provisions are not in conflict with the provisions of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 29.

### **§ 3127. Emancipation**

A child over the age of sixteen (16) may petition the court for emancipation. The court shall grant such status when the child proves to the court that the child is capable of functioning as an independent and responsible member of the community.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 22.

## § 3128. Authorization of Medical Treatment

(a) At any time whether or not a child is under the authority of the court, the court may authorize medical or surgical care for a child when:

(1) **Unavailability of Parent, Guardian or Custodian.** A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable effort in the circumstances of the case, or

(2) **Life Endangerment.** A physician informs the court orally or in writing that in his professional opinion, the life of the child would be greatly endangered without certain treatment and the parent, guardian or other custodian refuses or fails to consent. If time allows in a situation of this type, the court shall cause every effort to be made to grant the parent(s), guardian or custodian an immediate informal hearing, but this hearing shall not be allowed to further jeopardize the child's life.

(b) In making its order the court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods approved by Band customs, traditions or religions.

(c) After entering any authorization under this section, the court shall reduce the circumstances, finding and authorization to writing and enter it in the records of the court and shall cause a copy of the authorization to be given to the physician or hospital or both, that was involved.

(d) Oral authorization by the court is sufficient for care or treatment to be given and shall be accepted by any physician or hospital. 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 a court for performance of care or treatment in reliance on the court's authorization and any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

### Historical and Statutory Notes

**Source:**

Band Ordinance 01-96, § 23.

## Subchapter 3 Child Abuse and Neglect

**Section**

3141. Protective Services Workers  
3142. Child Protection Team

- 3143. Duty to Report Child Abuse and Neglect
- 3144. Investigation and Removal
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- 3146. Restrictions on Placement of Children
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- 3149. Notification of Rights
- 3150. Thirty (30) Day Hearing
- 3151. Formal Trial on the Issues
- 3152. Notice of Formal Trial on the Issues
- 3153. Default Judgment
- 3154. Six (6) Month Review
- 3155. Social Service Report
- 3156. Placement Preferences

### **§ 3141. Protective Services Workers**

(a) Protective services workers shall be employed by the tribal social services department and/or the tribal law enforcement department.

(b) The department(s) may cooperate with such state and community agencies as are necessary to achieve the purposes of this chapter. The department(s) may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Band Assembly.

(c) A protective services worker shall:

(1) Receive reports of neglected, abused or abandoned children and be prepared to provide temporary foster care for such children on a twenty four (24) hour basis, and;

(2) Receive from any source, oral or written, information regarding a child who may be in need of protective services.

(3) Upon receipt of any report or information under subparagraph (1) or (2) of this paragraph immediately:

(A) notify the appropriate law enforcement agency, and;

(B) make prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home.

(4) Take a child into temporary custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his

surroundings and that his removal is necessary. Law enforcement officials shall cooperate with social services personnel to remove a child from the custody of his parents, guardian, or custodian when necessary.

(5) After investigation, evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. They shall determine whether any of such children is a child in need of protective services.

(6) Offer to the family of any child found to be a child in need of protective services appropriate services which may include, but shall not be restricted to, protective services.

(7) Within thirty (30) days after a referral of a potential child in need of protective services, submit a written report of his investigation and evaluation to the Solicitor General and to a central registry maintained by the department(s).

(d) No child shall remain in temporary custody for a period exceeding seventy-two (72) hours, excluding Saturdays, Sundays and holidays, unless a child / family protection petition is filed.

(e) Before offering protective services to a family, a worker shall inform the family that he has no legal authority to compel the family to receive such services and of his authority to initiate a petition in the Children's Court.

(f) If the family declines the offered services, the worker may initiate a child / family protection petition in Children's Court alleging a child in need of protective services if he believes it to be in the child's best interest.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 6.

### **§ 3142. Child Protection Team**

(a) The Mille Lacs Band shall establish a child protection team. Establishment of the child protection team is an attempt, through the involvement and coordination of various agencies, to prevent Indian children from being abused or neglected. In cases where children have been abused or neglected, efficient and effective protective services shall be provided so as to immediately secure the children's safety and health. Follow-up actions shall then be taken to stabilize the circumstances for the long-term benefit of the children and, to the extent possible, their family members.

(b) Prevention of child abuse and neglect is to be emphasized. The child protection team is intended to facilitate the identification of danger signs which will prompt immediate intervention and/or preventive actions to be taken. However, when a child's well-being is found to be endangered, the child protection team should recommend protective services as promptly, efficiently, and effectively as possible. These services are to be provided so as to ensure the child's immediate safety and health. Once attained, to the extent possible, actions are to be taken to correct the problems which caused the abuse or neglect and prevent it from occurring again. The child protection team should facilitate the development and implementation of a plan to promote the long-term well-being of the child and the appropriate family members.

(c) The child protection team is technical and advisory in nature. In no way is it intended to undermine the authorities and responsibilities of individual agencies. It is designed to promote cooperation, communication, and consistency among agencies. It is appropriate for the child protection team to debate what actions would best promote the well-being of a child and provide relevant information and advice to decision-making agencies. The child protection team shall facilitate (not hinder) the decision making process. Confidentiality shall be maintained by all child protection team members.

(d) The duties of the child protection team shall include the development and implementation of procedures for:

**(1) Providing Oversight**

(A) Monitor child abuse and neglect activities to ensure that adequate preventive, protective, and corrective services are provided.

(B) Review and track all child abuse and neglect cases which have been referred.

(C) Review case plans for their adequacy.

(D) Maintain confidentiality of information.

**(2) Facilitating Provision of Services**

(A) Identify available community resources, programs and services.

(B) Provide recommendations to various pertinent agencies.

(C) Promote cooperation, communication, and consistency among agencies.

(D) Provide a forum for debating what action would best promote the well-being of Indian children.

(E) Respond to inquiries from the community, area child protection teams, and other individuals and groups.

**(3) Providing Technical Assistance**

(A) Develop procedures to provide effective and efficient preventive, and corrective child abuse and neglect services.

(B) Develop standards to determine which cases are to be investigated.

(C) Provide information and technical recommendations to decision-making agencies.

(D) Educate communities about child abuse and neglect problems and solutions.

(E) Assist in the development and implementation of plans to promote the long-term well-being of children and their families.

(F) Assist in the development and implementation of strategies by communities to create environments which provide opportunities for community members to lead meaningful, productive, self-fulfilling, and rewarding lives. These environments should promote the dignity, self-worth, self-respect, and self-sufficiency of community members.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 7.

**§ 3243. Duty to Report Child Abuse and Neglect**

(a) **Duty to Report.** Any person who has a reasonable cause to suspect that a child has been abused, neglected or abandoned shall immediately report the abuse, neglect or abandonment to the tribal social services department and/or tribal law enforcement department.

(b) **Person Specifically Required to Report.** Those persons who are mandated to report suspected abuse or neglect include any physician, nurse, dentist, optometrist, or any other

medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker or other child care staff including foster parents, residential care or institutional personnel, counselor; peace officer or other law enforcement official; judge, juvenile counselor(s), clerk of court, Solicitor General or other judicial system official(s).

(c) **Anonymous Reports.** Any person who has reasonable cause to suspect that a child has been abused, neglected or abandoned shall report the abuse, neglect or abandonment. Those persons reporting, except those specified in paragraph (b) of this section, may remain anonymous.

(d) **Immunity from Liability.** All persons or agencies reporting, in good faith, known or suspected instances of child abuse or neglect shall be immune from civil liability and criminal prosecution.

(e) **Penalty for Not Reporting.** Those persons mandated to report a case of known or suspected abuse or neglect who knowingly fail to do so or wilfully prevent someone else from doing so shall be subject to a civil cause of action proceeding in the Court of Central Jurisdiction.

(f) **Abuse and Neglect Reports.**

(1) **Form of Report:** Those persons mandated to report under paragraph (b) of this section shall promptly make an oral report to the Mille Lacs Band Social Services Department and then make a written report within 48 hours.

(2) **Contents of Written Report:** The following information shall be included in the written report:

(A) Names, addresses, and tribal affiliation of the child and his parents, guardian, or custodian.

(B) The child's age.

(C) The nature and content of the child's abuse and neglect.

(D) Previous abuse or neglect of the child or his siblings, if known.

(E) The name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known.

(F) The name and address of the person or agency making the report.

(3) **Photograph of Visible Trauma:** Persons reporting suspected abuse or neglect

may photograph or cause X-rays to be taken of the child suspected of being abused and such photographs or X-rays may be introduced into evidence at a hearing.

(g) **Central Registry.** The Mille Lacs Band Social Services and Mille Lacs Band Law Enforcement shall maintain a central registry of reports, investigations and evaluations made under this chapter. The registry shall contain the information furnished by Band personnel throughout the reservation, including protective services workers, probation officers, caseworkers and Indian Child Welfare Program employees. Data shall be kept in the central registry until the child concerned reaches the age of eighteen (18) years (unless the Children's Court orders that individual records shall be kept on file beyond that date in order to protect other siblings). Data and information in the central registry shall be confidential and shall be made available only with the approval of the director of the department to the Children's Court, social services agencies, public health and law enforcement agencies, licensed health practitioners, and health and educational institutions. A request for the release of information must be submitted in writing, and such request and its approval shall be made part of the child's file.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 8.

### **§ 3144. Investigation and Removal**

(a) **Investigation.** The child abuse or neglect report shall be investigated within forty-eight (48) hours by the Social Services Department or other appropriate agency, unless the Children's Court directs otherwise.

(b) **Authority to Remove.** If the law enforcement or social services personnel investigating a report of child abuse or neglect finds that the grounds for removal, listed in paragraph (c) of this section have been met, such person may remove the child from the home in which the child is residing and place the child in a temporary receiving home or other appropriate placement.

(c) **Grounds for Emergency Removal.** A child shall not be removed from the home of the child's parents, guardian or custodian without the consent of the parent, guardian or custodian absent a specific order of the Children's Court, except as follows:

(1) When failure to remove the child may result in a substantial risk of death, permanent injury, or serious emotional harm, or;

(2) When the parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his own basic necessities of life, and

that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities.

(d) **Power to Remove.** A Social Services worker or Law Enforcement officer shall have the power to remove a child pursuant to this section provided that:

(1) Reasonable grounds existed at the time of the removal to believe the removal was necessary, and;

(2) The person removing the child ensures the safety and well-being of the child, until such time as the Children's Court assumes control of the matter, and;

(3) The person removing the child complies with the notice provisions contained in section 3145 of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 9.

### **§ 3145. Notice of Removal**

(a) **Notice to the Children's Court.** After a child is removed from his home, the person who removed the child shall attempt to contact the Children's Court within eight (8) business hours. The attempt to contact the Court shall be documented. Actual notice to the Court shall be made, by the removing person, no later than 12:00 p.m. the next Court working day.

(b) **Notice to the Parent, Guardian or Custodian.** The Court shall make all reasonable efforts to notify the parents, guardian or custodian, within twelve (12) hours of the Court's actual notice of the child's removal. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian is known to frequent with regularity. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 10.

## § 3146. Restrictions on Placement of Children

A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile offenders, but may be detained in the following community-based shelter care facilities:

(a) A licensed foster home or a home otherwise authorized under the law to provide foster care, group care, protective residence, or;

(b) A facility operated by a licensed child welfare services company, or;

(c) With a relative of the child who is willing to guarantee to the court that the child will not be returned to the alleged abusive or neglectful parent, guardian or custodian without the prior approval of the court, or;

(d) Any other suitable place, other than a facility for the care and rehabilitation of juvenile offenders to which children adjudicated as juvenile offenders may be confined and which meets the standards for shelter-care facilities established by the department.

### Historical and Statutory Notes

#### Source:

Band Ordinance 01-96, § 11.

## § 3147. Filing Child / Family Protection Petition

(a) **Authorization to File Petition.** Formal child / family protection proceedings shall be instituted by a child / family protection petition filed by the Solicitor General on behalf of the Band and in the best interests of the child.

(b) **Time Limitations.** If a child has been removed from the home, a child / family protection petition shall be filed with the Children's Court no later than 12:00 p.m. of the second court working day following the removal.

(c) **Contents of Petition.** The child / family protection petition shall set forth the following with specificity:

(1) The name, birth-date, sex, residence and tribal affiliation of the child;

(2) The basis for the Court's jurisdiction;

(3) The specific allegations of abuse, neglect or abandonment;

(4) A plain and concise statement of the facts upon which the allegations of abuse, neglect or abandonment are based, including the date, time and location at which the alleged facts occurred;

(5) The names, residences and tribal affiliation of the child's parents, guardians or custodians, if known;

(6) The names, relationship and residence 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, where the child is placed, the facts necessitating the placement and the date and time of the placement.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 12.

### **§ 3148. Initial Hearing**

(a) **Hearing Date.** An initial hearing shall be held regarding the removal of a child before the end of the second working day following the filing of the child / family protection petition.

(b) **Purpose.** The purpose of the initial hearing is to determine whether it is reasonable to believe that continuing absence from the home is necessary to protect the well-being of the child.

(c) **Advice of Rights.** During the hearing, the court shall advise the party(s) of the reason for the hearing and of their basic rights as provided for in section 3149 of this chapter.

(d) **Nature of Hearing.** The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence will not be excluded at this hearing as long as it is otherwise admissible. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, Social Services, the child's extended family and any other person as determined appropriate by the court shall be admitted.

(e) **Possible Outcomes of the Initial Hearing:**

(1) The child / family protection petition may be dismissed and the child returned to the home.

(2) The child may be returned to the home of the parents, guardians or custodians

under the supervision of the court and another hearing held within thirty (30) days.

(3) The child may continue in the child's out-of-home placement and a thirty (30) day hearing will be held.

(f) **Notice of Initial Hearing.** The court shall make all reasonable efforts to advise the parents, guardians or custodian of the time and place of the initial hearing. The court shall request that the parent, guardian or custodian be present for the hearing. Reasonable efforts shall include personal, telephone and written contacts at their residence, place of employment or other location where the person is known to frequent with regularity. If the court is unable to contact the parent, guardian or custodian, notice shall be given to members of the extended family of the child.

(g) **Unresolved Issues.** If the problems are not resolved at the initial hearing or the thirty (30) day hearing, the Court will set a date for a formal hearing on the issues. Such date will be no later than ninety (90) days after the filing of the child / family protection petition.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 13.

### **§ 3149. Notification of Rights**

All parties have a right to be represented by an advocate / attorney at their own expense in all proceedings under this chapter, 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, ten (10) days prior to any hearing.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 14.

### **§ 3150. Thirty (30) Day Hearing**

(a) A second hearing will be held within thirty (30) days following the initial hearing. The purpose of this hearing is for the court to reassess whether continuing court intervention is necessary to protect the well-being of the child.

(b) The thirty (30) day hearing shall be held according to paragraphs (b), (c), (d), (e) and (f) of section 3148 of this chapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 15.

### **§ 3151. Formal Trial on the Issues**

(a) **Time Limitation.** The formal trial on the issues will be set for no later than ninety (90) days following the filing of the child / family protection petition.

(b) **Admissibility.** The records of the initial hearing and the thirty (30) day hearing shall not be admissible at the formal trial. This shall not be construed to prevent the admissibility of any evidence that was presented at these hearing(s) which would be admissible under the court's rules of evidence.

(c) **Closed Hearing.** The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's family, and other persons determined to be appropriate by the court shall be admitted.

(d) **Advice of Rights.** At the beginning of the hearing, the court shall advise the party(s) of the reason for the hearing and of their basic rights as provided for in section 3149 of this chapter.

(e) **Child Witnesses.** If the court determines that it is in the best interests of the child and does not violate the rights of a party, the court may allow the child to testify by means of a videotape deposition, closed circuit television or other appropriate method. If the court does allow these methods to be utilized, the court shall specifically set out the reasons for this determination on the record.

(f) **Burden of Proof.** The burden of proof lies with the petitioner. The petitioner must prove that the allegations raised in the child / family protection petition are more likely true than not, that is, by the preponderance of the evidence, and that the best interests of the child will be served by continued court intervention.

(g) **Outcome of Hearing.** The court will either find the allegations of the child / family protection petition to be true or dismiss the child / family protection petition, unless the hearing shall be continued to a date certain to allow for the presentation of further evidence.

(h) **Return to Home.** The court may find the allegations of the child / family protection petition to be true, but that out of home placement is not needed to protect the child. The court

may, however, due to unresolved problems in the home, continue court intervention and supervision as appropriate.

(i) **Grounds for Continuing Removal From the Home.** The court may find the allegations of the child / family protection petition to be true and order that the child remain out of the home. The grounds for continuing removal from the home of a parent, guardian or custodian are:

(1) A child has no parent, guardian or custodian available, willing and capable to care for the child.

(2) The child has suffered, or is likely to suffer, a physical injury inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions.

(3) The child has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his / her parent, guardian or custodian, which is necessary for the child's health and well being, and the parent or guardian is incapable of continuing to provide the child with adequate food and care.

(4) The child has been sexually abused or sexually exploited.

(5) The child has committed juvenile offenses as a result of parental pressure, guidance or approval.

(6) The child has been emotionally abused or neglected.

(7) The child has suffered, or is likely to suffer, emotional damage which causes or creates a substantial risk of impaired development.

(j) **Court Order for Continuing Removal.** The court shall specify in its order the necessary intervention and appropriate steps, if any, the parent, guardian or custodian must follow to correct the underlying problem. The court shall make particularized findings as to the grounds for continuing removal of the child from the home.

(k) **Return of Child to Parent, Guardian or Custodian.** The court may find the allegations of the child / family protection petition to be true and out-of-home placement necessary, but with the performance of specified actions by the parent, guardian or custodian, the child may be returned absent good cause to the contrary. The order of the court will specify actions, and the time frames for such actions, that parents, guardians, or custodians must accomplish before the child is returned. The order will also specify the responsibilities of any support agency or personnel to be involved.

(l) **Out-Of-Home Placement.** The court may find the allegations of the child / family protection petition to be true and that out-of-home placement continues to be necessary and further that the child may not be returned to the home, absent specific order of this court. The court shall specify what steps the parents shall take to demonstrate their abilities to care for their child, and specify to the parties what factors the court will consider at a subsequent hearing to determine whether or not the child should be returned.

(m) **Written Order.** The court shall specify in writing the facts, grounds, and statutory sections upon which it relied to make its decisions.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 16.

### **§ 3152. Notice of Formal Trial on the Issues**

(a) **Summons.** The court shall issue a summons to the parent, guardian or custodian and such other persons as appear to the court to be proper or necessary parties to the proceedings. The summons shall require them to appear personally before the court at the time set for the formal trial.

(b) **Attachments to Summons.** A copy of the child / family protection petition shall be attached to each summons. The court shall also attach a notice to the parent, guardian or custodian which advises them of their rights under section 3149 of this chapter.

(c) **Personal Service.** If the parties to be served with a summons can be found within the territorial jurisdiction of the Mille Lacs Band, the summons, a copy of the child / family protection petition and the notice of rights shall be served personally upon them at least twenty (20) court days before the formal trial on the issues.

(d) **Mail Service.** If the parties are within the exterior boundaries of the reservation but cannot be personally served, and if their address is known, the summons, petition and notice of rights may be served by certified mail with a return receipt requested, at least twenty (20) days before the formal trial.

(e) **Notice to Extended Family.** If the court cannot accomplish personal or mail service on the parent, guardian or custodian, the court shall attempt to notify the parent, guardian, custodian by contacting members of the extended family of the parent, guardian, custodian, and/or the extended family of the child.

(f) **Service of Summons.** Service of summons may be made under the direction of the court by any person eighteen (18) years of age or older who is not a party to the proceedings.

(g) **Publication.** In a child / family protection case where it appears within the body of the petition or within an accompanying statement that the parent, guardian or custodian does not reside within the territorial jurisdiction of the Mille Lacs Band, or that their name, place of residence or whereabouts is unknown, as well as in all cases where after due personal service or service by certified mail has been unable to be effected, the court shall direct the clerk to publish legal notice in a newspaper, printed in the county or on the reservation, qualified to publish summons once a week for three consecutive weeks with the first publication of the notice to be at least twenty-one (21) days prior to the date fixed for the hearing. Such notice shall be directed to the parent, guardian or custodian if their names are known, or if unknown a phrase to whom it may concern, be used and applied to and be binding upon any such person whose names are unknown. The name of the court, the date of the filing of the petition, the date of the hearing, and the object of the proceeding in general terms, shall be set forth. There shall be filed with the clerk an affidavit showing publication of the notice. The publication of the notice shall be paid by the Mille Lacs Band. The publication of the notice shall be deemed equivalent to personal service upon all persons known or unknown who have been designated as provided in this paragraph.

(h) **Contempt Warning.** The summons issued by the court shall conspicuously display the words:

NOTICE, VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDINGS FOR CONTEMPT OF COURT PURSUANT TO MILLE LACS BAND STATUTE 1303-MLC-4, SECTION 17.05. THE COURT MAY FIND THE PARENT, GUARDIAN OR CUSTODIAN IN CONTEMPT FOR FAILURE TO APPEAR AT A COURT HEARING OR FOR FAILURE TO FOLLOW COURT ORDERS.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 17.

### **§ 3153. Default Judgment**

(a) **When Appropriate.** If the parent, guardian or custodian fail to appear for the formal trial, the court may find the parent, guardian or custodian in default, and enter a default order of child / family protection and order necessary intervention and appropriate steps the parents, guardian or custodian must follow to correct the problem.

(b) **Notice Determination.** Prior to finding a parent, guardian, or custodian in default, the court must be satisfied actual notice has been given or that all reasonable steps have been

taken to provide notice of the formal trial to the parent, guardian or custodian. The court must also find that the petitioner can prove the elements of the child / family protection petition.

(c) **Written Order.** If the parent, guardian or custodian is found in default, the court shall specify the facts, grounds, and statutory provisions upon which it relied to make the decision.

#### Historical and Statutory Notes

**Source:**

Band Ordinance 01-96, § 18.

### § 3154. Six (6) Month Review

(a) **Review Requirement.** The status of all children subject to a child / family protection order shall be reviewed by the court at least every six (6) months at a hearing to determine whether court supervision shall continue, except that the first review following a formal trial on the issues shall be held within ninety (90) days of the formal trial on the issues.

(b) **Return to Home.** A child shall be returned home following review hearing unless the court finds that a reason for removal as set forth in section 3151(i) of this chapter still exists. The court may, however, due to unresolved problems in the home, continue court intervention and supervision if appropriate.

(c) **Written Order.** If continued court intervention is determined to be necessary, the Court shall set forth the following in a written order:

(1) What services have been provided or offered to the parent, guardian or custodian to help correct the underlying problem(s).

(2) The extent to which the parent, guardian or custodian has visited or contacted the child, any reason why such visitation and/or contact has been infrequent or has not otherwise occurred.

(3) Whether the parent, guardian or custodian is cooperative with the Court.

(4) Whether additional services should be offered to the parent, guardian or custodian.

(5) Whether the parent, guardian or custodian should be required to participate in any additional programs to help correct the underlying problem(s).

(6) When the return of the child can be expected.

(d) **Additional Steps.** The court at the review hearing may order that a guardianship petition be filed.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 19.

### **§ 3155. Social Service Report**

(a) **Requirement of a Social Services Report.** To aid the court in its decision, a social services report consisting of a written evaluation of matters relevant to the disposition of the case shall be made by the person or agencies filing the petition.

(b) **Contents of a Social Services Report.** The social services report shall include the following points, and be made available to the court, and the parties as deemed appropriate by the court, at least three (3) days prior to a child / family protection review hearing:

(1) A summary of the problem(s).

(2) What steps, if any, have the parent, guardian, custodian or social services personnel already taken to correct the problem(s).

(3) What services could benefit the parent, guardian or custodian, but are not available in the community.

(4) A report on how the child is doing in his / her current placement(s) since the last hearing. If there have been any moves, the report will contain the reason for such moves.

(5) Dates of contacts with parent, guardian or custodian and the child since the first hearing was held, method of contact, duration and subjects discussed.

(6) If there have been no contacts with the parent, guardian, custodian by the social worker, what efforts have been made to contact such parties.

(7) An assessment of when the child is expected to return home.

(8) A list of who the extended family members are and a list of contacts or attempts to contact such family members regarding placement of child.

(9) Social services personnel shall develop a case plan and shall make

recommendations for the next six (6) months. Such recommendations will include:

- (A) A treatment plan for the parents, guardian or custodian.
- (B) Future placement of the child.
- (C) What services should be provided for the child, if services are needed.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 20.

**§ 3156. Placement Preferences**

(a) **Least Restrictive Setting.** If a child cannot be returned home, the child shall be placed in the least restrictive setting which most approximates a family in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his home, taking into account any special needs of the child. The placement restrictions set forth in section 3146 of this chapter shall be followed.

(b) **Order of Preferences.** Whenever appropriate, a child shall be placed in a home with the following characteristics, which shall be given preference in the following order:

- (1) Members of the extended family.
- (2) An Indian family of the same Band as the child.
- (3) An Indian family.
- (4) People who have a relationship with the child, but who are not related to the child.
- (5) Any other family which can provide a suitable home for such a child.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 21.

## Subchapter 4 Foster Home Licensing Procedures

### Section

- 3171. Inspection and Licensing Procedures
- 3172. Foster Home Requirements
- 3173. The Foster Family
- 3174. The Foster Child

### § 3171. Inspection and Licensing Procedures

(a) The Mille Lacs Band shall select one or more persons as the foster home inspector(s). The foster home inspector shall examine homes of Band members and others who reside both within a thirty (30) mile radius of Mille Lacs Band trust or allotted land. The foster home inspector shall submit a recommendation to the Band Assembly, who shall act upon said recommendation within thirty (30) days of receipt of said recommendation.

(b) Except under exceptional circumstances, or in order to preserve a family unit, no foster home may accept more than four (4) foster children.

(c) Any license issued by the foster home inspector shall apply only to the residence(s) where the family is living at the time application for a license is made, and a permanent change of residence automatically terminates the license. The foster care parents are required to notify the foster care inspector whenever a change of residence is contemplated.

(d) The foster care parents must also notify the foster care inspector whenever a change in the household occurs. Examples of a change in the household include but are not limited to, if one of the foster care parents is convicted or is accused of a felony or gross misdemeanor crime or if one of the foster parents moves out of the residence, or if any other person moves into the residence, the foster care inspector must be informed within seventy-two (72) hours. Failure to timely notify the foster care inspector of a change in circumstance will result in the immediate suspension of the license.

### Historical and Statutory Notes

#### Source:

Band Ordinance 01-96, § 24.01.  
Band Ordinance 36-03, § 1.

The Preamble to Band Ordinance 36-03 (amending paragraph (a) of this Section) provides:

**“Preamble.** It is enacted by the Band Assembly for the purpose of amending the foster

home licensing procedures to rescind the automatic implementation of the foster home inspector’s licensing recommendation.”

### **§ 3172. Foster Home Requirements**

(a) The home shall be constructed, arranged and maintained so as to provide for the health and safety of all occupants. The foster care inspector may, upon twenty-four (24) hours' notice, inspect a foster care dwelling at any time.

(b) Heating, ventilation, and light shall be sufficient to provide a comfortable, airy atmosphere. Furnishing and housekeeping shall be adequate to protect the health and comfort of the foster child.

(c) Comfortable beds shall be provided for all members of the family. Sleeping rooms must provide adequate opportunities for rest. All sleeping rooms must have a window of a type that may be opened readily and may be used for evacuation in the event of an emergency.

(d) Play space shall be available and free from hazards which might be dangerous to the life or health of the child.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 24.02.

### **§ 3173. The Foster Family**

(a) All members of the household must be in such physical and mental health as will not adversely effect either the health of the child or the quality and manner of the child's care.

(b) Members of the foster family or household shall be of good character and habits. They must never have been convicted of a sex offense. They may not have any felony convictions within the last five (5) years. Exceptions concerning non-sexual felony convictions can be made providing adequate information is provided indicating that a change of character has occurred.

(c) The person in charge of the foster home shall be of suitable temperament to care for the children, shall understand the special needs of the child as an Indian person and shall be capable of bringing the child up as an Indian person who is well adjusted and able to get along both within the tribal community and in the non-Indian community as well.

(d) Foster parents shall be responsible, mature individuals who are, in the view of most community members, of good character. Foster parents must be at least twenty-one (21) years old (unless a member of the child's extended family), but there is no upper age

level provided the foster parent has the physical and emotional stamina to deal with the care and guardianship of a foster child. The foster parent must be willing, when necessary, to cooperate with the biological parents and must be willing to help the family re-establish necessary family ties.

(e) A foster home does not necessarily have to have both a male and a female foster parent. The foster care inspector may, at the inspector's discretion, certify a foster home with a single foster parent provided that foster parent displays the outstanding qualities necessary to raise a foster child.

(f) The foster parent must have an income sufficient to care for all individuals in the foster home. The foster care inspector may take into account the state stipend when determining the financial ability of the foster care parents.

(g) Any time a pre-school foster child is placed in a foster home there must be at least one (1) foster parent in full time attendance. For school age children the foster parent must show the arrangements which will be made for those periods of time when both foster parents are employed. Infants and young children shall never be left alone without competent supervision.

(h) Without specific approval by the **Band Assembly**, a foster home shall not be licensed whenever any member of the family is mentally ill or on convalescent status from a mental hospital or is on parole or probation or in an inmate of a penal or correctional institution.

(i) The standards the foster care inspector shall use in judging the above criteria shall be those of the Mille Lacs Reservation Indian community.

(j) The foster care inspector is authorized to make a complete investigation to determine the adequacy of the foster care home. The inspector shall be authorized to examine not only the potential foster home parents, but also any other Band member or community member who is familiar with the applicants and is familiar with the type of care they provide to the children.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 24.03.

### **§ 3174. The Foster Child**

(a) The daily routine of a foster child shall be such as to promote good health, rest and play habits.

(b) The responsibility for a child's health care shall rest with the foster parents. In case of sickness or accident to a child, immediate notice shall be given to the foster care

inspector. Foster care parents may consent to surgery or other treatment in a medical emergency.

(c) The foster care parents shall not subject the child to verbal abuse, derogatory remarks directed at the child, the child's natural parents or relatives, or to threats to expel the child from the foster home. No child shall be deprived of meals, mail or family visits as a method of discipline. When discipline or punishment must be administered, it shall be done with understanding and reason. The method of punishment will be that which is accepted by the people of the Mille Lacs Reservation Indian community.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 24.04.

## **Subchapter 5 Guardianship**

**Section**

- 3201. Purpose
- 3202. Types of Guardianship
- 3203. Guardianship of Property
- 3204. Permanent Guardianship
- 3205. Temporary Guardianship
- 3206. Who May File Guardianship Petition
- 3207. Contents of Guardianship Petition
- 3208. Guardianship Report
- 3209. Guardianship Procedures
- 3210. Management of Property
- 3211. Incompetent Persons

### **§ 3201. Purpose**

(a) The Children's Court, when it appears necessary or convenient, may appoint guardians for the persons and/or property of children under the court's jurisdiction or incompetents who have no guardian legally appointed by will or need. Such appointment may be made on the petition of a relative or other person on behalf of the child or incompetent, or a petition of the child if at least fourteen (14) years of age. Before making such appointment, the court must cause such notice as the court deems reasonable to be given to any person having the care of the child, and to such other relatives of the child residing on the reservation as the court may deem proper, and in cases of adult incompetents, the court may cause notice to be given to the incompetent at least ten (10) calendar days before hearing the petition.

(b) If a child is under the age of fourteen (14) years, the court may nominate or appoint his guardian. If he is fourteen (14) years of age or older, he may nominate his own guardian who, if approved by the court, must be appointed accordingly. If the guardian nominated by the child is not approved by the court, or if the child resides

outside of the reservation, or if, after being duly cited by the court, he neglects for ten (10) days to nominate a suitable person, the court may nominate and appoint the guardian in the same manner as if the child were under the age of fourteen (14) years.

(c) When a guardian has been appointed by the court for a child under the age of fourteen (14) years, the child, at any time after he attains that age, may nominate his own guardian, subject to the approval of the court. A guardian appointed may as specified by the court have the custody and care of the education of the child and the care and management of the child's property until such child reaches the age of eighteen (18), or marries, or is emancipated by the court under section 3127 of this chapter, or until the guardian is legally discharged, provided, however, that said guardian shall not have the authority, without express written consent of the court, to dispose of any real or personal property of the child in any manner, including, but not limited to, the child's individual Indian Money Market Account or assets otherwise held for the benefit of the child. Said guardian shall also have the authority to consent to the medical care and treatment of the child.

(d) The court may order that the court disburse monthly reimbursement payments to the person or agency to whom custody is granted under this statute, provided sufficient funds have been appropriated by the **Band Assembly**. Such disbursements must be used by the person or agency with custody of the child for the sole purpose of covering expenses incurred in the care and custody of said child and shall not be used for any other purpose. The use of said funds for any purpose other than that described in this section shall subject said person or agency to contempt of court and to any criminal and civil penalties or remedies provided by band statute.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.01.

### **§ 3202. Types of Guardianship**

The types of guardianship shall include guardianship of property and/or guardianship of the person. Guardianship of the person shall include both temporary guardianship and permanent guardianship.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.02.

### **§ 3203. Guardianship of Property**

The court may appoint a guardian of the property of a child or incompetent person under such terms and conditions as the court sets forth in the written order. The guardianship may cover all property until the child reaches eighteen (18) years of age or until the incompetent person becomes competent or it may be limited to only specific property or a specific legal action as set forth in the written order. A temporary or permanent guardianship of the person may also include guardianship of the child's property if set forth in the written order.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.03.

### **§ 3204. Permanent Guardianship**

The court may appoint a permanent guardian for the child under such terms and conditions as the court sets forth in the written order. Permanent guardianship provides for permanent custody of a child to someone other than the parent(s), although there is no termination of the parental rights of the parents. There shall be a presumption of continued permanent guardianship in order to provide stability for the child. Permanent guardianship shall only be terminated based upon the unsuitability of the permanent guardian(s) rather than the competency or suitability of the parent(s). The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the court.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.04.

### **§ 3205. Temporary Guardianship**

The court may appoint a temporary guardian under such terms and conditions as the court sets forth in the written order. A temporary guardianship may be terminated if the court determines that it is in the best interests of the child to change custody from the temporary guardianship to a new guardian or to return the child to the parent, guardian or custodian. The parent(s) and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the court.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.05.

## **§ 3206. Who May File Guardianship Petition**

Any person may file a petition for guardianship. The petition shall be initiated either by the proposed guardian or by the child if at least fourteen (14) years of age.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.06.

## **§ 3207. Contents of Guardianship Petition**

(a) The petition for guardianship shall include the following, to the best information and belief of the petitioner:

- (1) The full name, address and tribal affiliation of the petitioner;
- (2) The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;
- (3) The basis for the court's jurisdiction;
- (4) The relationship of the proposed guardian to the proposed ward;
- (5) The name and address of the person or agency having legal or temporary custody of the proposed ward;
- (6) The type of guardianship requested;
- (7) In the case of an alleged incompetent person, the grounds for incompetency under section 3211 of this chapter; and
- (8) A full description and statement of value of all property owned, possessed, or in which the proposed ward has an interest (if guardianship of property is requested).

(b) All petitions must be signed and dated by the petitioners, and must be notarized or witnessed by a clerk of the court.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.07.

## **§ 3208. Guardianship Report**

(a) Upon the filing of a guardianship petition, the court shall immediately request that the Social Services Department or other qualified agency conduct a guardianship report on the proposed guardian and report on the proposed ward. The guardianship report shall contain all pertinent information necessary to assist the court in determining the best interests of the proposed ward.

(b) No determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the court. The guardianship report shall be submitted to the court at least ten (10) days before the hearing. The court may order additional reports as it deems necessary.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.08.

## **§ 3209. Guardianship Procedures**

The procedures for guardianship hearings shall be in accordance with sections 3148(c), (d) and (e), 3149, 3155 and 3156 of this chapter.

### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.09.

## **§ 3210. Management of Property**

(a) In the event that any guardian shall receive any money or funds of any child or incompetent person during his or her term of office as guardian, before taking and receiving into custody such money or funds, the court may require of such person a bond with sufficient surety to be approved by the court and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust, and the following conditions shall form the part of such bond without being expressed therein:

(1) To make an inventory of all the estate of the ward that comes into possession or knowledge of the guardian and to return the same within such time as the court may order, and;

(2) To dispose of and manage the estate according to law and for the best interests of the ward, and faithfully to discharge trust duties in relation thereto, and also in relation to the care, custody and education of the ward, and;

(3) To render an account on oath of the property, estate and money of the ward in the guardian's hands and all the proceeds or interests derived therefrom, and of the management and disposition of the same, within three (3) months after being appointed, and at such other times as the court directs, and at the expiration of the trust, to settle all accounts with the court or judge or with the ward if the ward is of full age, or the ward's legal representative, and to pay over and deliver all the estate, monies and effects remaining in the guardian's hands, or due from the guardian on such settlement to the person who is legally entitled thereto.

(b) The funds of any child or incompetent must be used by his guardian solely for the support and education of such child and for the support of such incompetent, and shall be expended by the guardian in a reasonable manner according to the circumstances and station in life of such ward, and in such manner as can reasonably be afforded according to the income and estate of said ward.

(c) If determined to be appropriate by the court, the written order may set forth that the child's property may not be used for the child's care, but rather the ward's property to be managed for the child until the child reaches the age of eighteen (18) or is emancipated by the court.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.10.

### **§ 3211. Incompetent Persons**

(a) In case of incompetent persons, if after a full hearing and examination upon such petition, and upon further proof by the certificates of at least two qualified physicians showing that a person is incompetent as defined in this chapter, it appears to the court that the person in question is not capable of taking care for their self and capable of managing their property, the court shall appoint a guardian of the person and estate within the powers and duties specified in this chapter.

(b) Every guardian of an incompetent person appointed as provided herein has the care and custody of the person of their ward and the management of their estate until such guardian is legally discharged; the guardian must give bond to the ward in a similar manner and with similar conditions as specified with respect to the guardianship of a child.

(c) Any person who has been declared incompetent or the guardian of the incompetent, or any relative of such person within the third degree or any friend, may petition the court in which the person was declared incompetent, to have the determination of his incompetency redetermined. The petition shall be accompanied by two (2) physicians and shall state that such person is then competent. The court shall require notice be given of a hearing upon the petition at some date after the petition has

been filed; and at the hearing upon the petition, witnesses shall be examined and a determination made by the court as to whether the petition should be granted and the incompetent person declared of sound mind and capable of taking care of himself and his property, his restoration to competency shall be adjudged and the guardianship of such person, if such person shall not be a child, shall cease.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 25.11.

## **Subchapter 6 Adoptions**

**Section**

- 3231. Open Adoptions
- 3232. Consent to Adoption
- 3233. Execution of Consent to Adoption
- 3234. Who May File An Adoption Petition
- 3235. Contents of Adoption Petition
- 3236. Notice
- 3237. Homestudies
- 3238. Withdrawal of Consents
- 3239. Adoption Preferences
- 3240. Hearing Procedures
- 3241. Adoption Decree

### **§ 3231. Open Adoptions**

Adoptions under this statute shall be in the nature of “Open Adoptions.” The purpose of such open adoptions is not to permanently deprive a child of connections to, or knowledge of, the child’s natural family. The purpose of adoptions shall be to give the adoptive child a permanent home. To this end the following shall apply and be contained in all adoptive orders and decrees:

(a) The adoptive parents and adoptive child shall be treated under the law as if the relationship was of a natural child and parent, except as set forth herein.

(b) The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his natural family and tribal heritage.

(c) The adoptive child and members of the child’s natural extended family, including parents shall have the right of reasonable visitation with each other, subject to reasonable controls of the adoptive parents.

(d) Adoption shall not serve to prevent an adoptive child from inheriting from a natural parent in the same manner as any other natural child. The natural parent shall not

be entitled to inherit from an adoptive child in the same manner as parents would otherwise be entitled to inherit. An adoptive child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as the natural parents and child.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.01.

### **§ 3232. Consent to Adoption**

(a) **When not required:** Written consent to an adoption shall not be required if:

- (1) The parent's rights have been terminated;
- (2) The parent has relinquished their parental rights;
- (3) The parent has been declared incompetent;

(b) **When required:** Written consent to an adoption shall be required from:

- (1) The biological or adoptive mother;
- (2) The biological, adoptive, or acknowledged father;
- (3) The custodian, if empowered to consent;
- (4) The court, if the custodian is not empowered to consent;
- (5) The child, if the child is over twelve (12) years of age.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.02.

### **§ 3233. Execution of Consent to Adopt**

Written consent to an adoption shall be executed and acknowledged before the court. Consent shall not be accepted or acknowledged by the court until fourteen (14) days after the birth of a child. An interpreter shall be provided for the person consenting to the adoption if they do not understand English. The consent of a child over the age of twelve (12) years shall be given orally either in open court, or in chambers with the judge and any other person(s) the judge deems necessary present.

### Historical and Statutory Notes

**Source:**

Band Ordinance 01-96, § 26.03.

### § 3234. Who May File An Adoption Petition

Any person may file a petition for adoption. The petition shall be initiated by the person proposing to adopt. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife, except that if one of the spouses is the natural or adopted parent of the proposed adoptee, said person shall not be required to join in the petition.

### Historical and Statutory Notes

**Source:**

Band Ordinance 01-96, § 26.04.

### § 3235. Contents of Adoption Petition

(a) The petition for adoption shall include the following, to the best information and belief of the petitioner:

- (1) The full name, address, and tribal affiliation of the petitioner; and
- (2) The full name, sex, residence, date and place of birth, and tribal affiliation of the proposed adoptee; and
- (3) The name by which the proposed adoptee shall be known if the petition is granted; and
- (4) The basis for the court's jurisdiction; and
- (5) If the proposed adoptee is a child, a full description and statement of value of all property owned, or possessed in which the child has an interest; and
- (6) The relationship of the petitioner to the proposed adoptee; and
- (7) The names and addresses of any person or agency whose consent to aid adoption is necessary.

(b) Where there is more than one proposed adoptee, and the proposed adoptees are siblings, only one petition shall be required for the adoption of all or any combination of the siblings, provided that each sibling proposed to be adopted be named in the petition.

(c) All petitions must be signed and dated by the petitioner, and must be notarized or witnessed by a clerk of the court.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.05.

**§ 3236. Notice**

(a) Notice shall be provided in accordance with the notice procedures set forth in paragraph (b) of this section except that the court may determine that it is unnecessary to give notice to specific individuals, including a parent whose rights have been terminated.

(b) Notice shall be given by personal service. If service cannot be made personally, the court may authorize service by certified mail at the last known address of the person to be served. If notice cannot be served by registered mail, the court may authorize service by publication in either the tribal newspaper of the reservation, or a newspaper of general circulation in the county where the court is located, once a week for three consecutive weeks. All notices served whether personally or by certified mail shall be received by the person named therein no less than ten (10) days prior to the date set for the hearing. No hearing can be held sooner than ten (10) days after the last publication where service is made.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, §§ 26.06, 26.07.

**§ 3237. Homestudies**

(a) When a petition for the adoption of a child is filed with the court, the court shall immediately request that the Social Services Department or other qualified agency conduct a home study on the petitioner and report on the child. The homestudy and report shall relate the circumstances of the home, the petitioner and their ability, both physical and mental, to assume the responsibilities of a parent of the child. The homestudy shall contain other pertinent information designed to assist the court in determining the best placement for the child. The homestudy will also address the issue of whether or not the home most closely resembles that of the child's culture, identity, and where applicable, the child's tribal affiliation. The homestudy or report shall not be required where the proposed adoptee is an adult.

(b) No determination can be made on a petition for adoption until the homestudy and report has been completed and submitted to and considered by the court. The homestudy shall be submitted to the court no later than ten (10) days before the hearing.

The homestudy and report may be consolidated into one document. The court may order additional homestudies or reports as it deems necessary.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.08.

**§ 3238. Withdrawal of Consents**

(a) Any consent given under the provisions of this subchapter (§§ 3232 - 3241) may be withdrawn by the person or agency which gave the consent at any time prior to the entry of a final decree of adoption. No reason need be stated and no hearing need be held on such withdrawal.

(b) All withdrawals must be written and notarized or witnessed by a clerk of the court, with the original being filed with the court.

(c) Within two (2) years after the entry of a decree of adoption, said decree may be vacated upon a petition being filed and a showing that the consent which made the adoption possible was obtained through fraud or duress. Upon such a showing the court shall vacate the decree and return the adopted person to that status he had prior to entry of the decree.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.09.

**§ 3239. Adoption Preferences**

The preference of placement in adoption shall be in the following order unless the court determines that the child's best interests require deviation from the preferences:

- (a) Extended family members;
- (b) A tribal member or person eligible for tribal membership;
- (c) Other Indian person(s), and;

(d) If this order of preference cannot be met, then placement may be made with any person who has some knowledge of the child's tribal affiliation and the child's special needs.

- (e) All other persons.

## Historical and Statutory Notes

### Source:

Band Ordinance 01-96, § 26.10.

### § 3240. Hearing Procedures

(a) An adoption hearing shall be held within ninety (90) days of receipt of an adoption petition from the prospective parent(s). The court shall conduct the hearing to determine if it is in the best interests of the child to be placed with the petitioners. In determining the best interests of the child, the court shall examine:

- (1) The validity of written consent;
- (2) A termination of parental rights order;
- (3) The length of time of the child's wardship by the court;
- (4) The special conditions of the child;
- (5) The parent communication with the child;
- (6) The minor's consent to adoption, if the child is over twelve (12) years of age;
- (7) The homestudies or other reports, and;
- (8) The order of preference of placement.

(b) The petitioner and the proposed adoptee shall appear personally at the hearing. During the hearing the court shall advise the party(s) of their basic rights as provided in section 3149 of this chapter. The judge shall examine all persons separately, and may, if satisfied that all other requirements of this section have been met, enter a final decree of adoption, or may place the person to be adopted, if a child, in the legal custody of the petitioner for a period not to exceed six (6) months prior to entering a final decree of adoption.

(c) If the court determines that the adoption will not be in the child's best interest, or finds that all of the requirements of this chapter have not been met, it may deny the petition and make any other order it deems necessary for the care and custody of the child not inconsistent with this chapter.

(d) Proceedings for the termination of the child-parent relationship and proceedings for adoption may be considered and determined at one (1) hearing provided that all the requirements of this subchapter (§§ 3231 - 3241) governing termination are complied with fully.

(e) The hearing shall be informal in nature. Concerned parties may present evidence relating to the situation. Hearsay evidence will not be excluded from the proceedings. Only the parties, their counsel, witnesses, the child's extended family and other person determined to be appropriate by the court shall be allowed in the proceedings.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.11.

**§ 3241. Adoption Decree**

(a) If the court finds that the requirements of this chapter have been met and that the child's best interests will be satisfied, a final decree of adoption may be entered.

(b) A person, when adopted, may take the name of the person adopting, and the two shall thenceforth sustain toward each other the legal relation of parent and child, and shall have all the rights and shall be subject to all the duties of that relation, including all of the rights of a child of the whole blood to inherit from any person, in all respects, under the provisions of inheritance and succession of this chapter.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 01-96, § 26.12.