

**CHEROKEE COUNCIL HOUSE
CHEROKEE, QUALLA BOUNDARY**

Date

ORDINANCE NO. ____ (2016)

WHEREAS, the Eastern Band of Cherokee Indians values children and also values non-parent caregivers that not too uncommonly find themselves taking on the role of full-time parent; and

WHEREAS, the tribal Kinship Guardianship law was passed recognizing that there are situations where non-parent caregivers of children need and the children they care for deserve a legal connection between them so that the caregiver may legally carry out the parental duties the caregiver has volunteered to do; and

WHEREAS, consistent with legal protections guaranteed to parents under the Indian Civil Rights Act, and consistent with the Tribe's sovereign authority to set policy for the protection of children living within its jurisdiction, the Kinship Guardianship law provides a legal mechanism to strike a balance between the two public policy interests; and

WHEREAS, this law was meant to be easy for caregivers to read, understand and utilize if they met certain criteria but improvements need to be made in order to fully realize the potential for the public's self-help use of this law.

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians, in Council assembled, at which a quorum is present, that the following modifications to the Cherokee Code Ch. 35A, Section 22 shall be made as follows:

Cherokee Code Chapter 35A

SUBCHAPTER V. KINSHIP GUARDIANSHIP

Article 22

35A-1383. Policy and Purpose.

(a) It is the policy of the Eastern Band of Cherokee Indians that a child's best interests are served when the child is raised by their parents. When neither parent is able or willing to provide appropriate care, guidance and supervision to a child, it is the policy of the tribe to support a process to establish a legal relationship between the child and a caregiver

who will provide the child with love and appropriate care, guidance and supervision while maintaining, whenever possible, a connection to the child's parents.

(b) The purpose of this Article is to establish procedures to effect a legal relationship between a child and Caregiver when the child is ~~not~~ residing with a Caregiver and is not residing with either parent nor receiving financial support from either parent.

35A-1384. Definitions.

As used in this Article:

~~(a) "Abandonment" means the complete lack of parental contact with a child or marginal contact for more than twenty-four (24) of the last forty-eight (48) months, and the failure to provide financial support for more than one continuous year. Placement of the child with a relative shall not constitute abandonment.~~

~~(b) "Caregiver" means a person who has reached the age of eighteen with whom a child has resided for 60 consecutive days, unless otherwise provided in this Article, without the presence of a parent at the residence, and who provides that child with the love, care, maintenance and supervision consistent with the duties and responsibilities of a parent and is a:~~

~~(1) "Relative" which means:~~

~~(i) a person who is related by blood or marriage to a child, including but not limited to a grandparent, aunt or uncle, brother or sister, in-law, niece or nephew, first or second cousin or stepparent; or~~

~~(ii) a person who provides parenting to a child in the traditional Cherokee way; or~~

~~(iii) an individual with a substantial relationship to the child.~~

~~(ae)~~ "Child" means a person who has not reached their eighteenth birthday and is not married, emancipated, or a member of the Armed Forces of the United States;

~~(bd)~~ "Court Clerk" means ~~the Clerk of~~ the Cherokee Court.

~~(ce)~~ "Custodian" means ~~the person or agency that has been awarded legal custody of a child by a court~~ natural, legal custody a parent has as a result of the status of parent when those rights have not been terminated or otherwise modified by a court order or custody rights established by court order.

~~(df)~~ "Parent" means a biological or adoptive parent of a child whose parental rights have not been terminated.

~~(g)~~ "Tribe" means ~~the Eastern Band of Cherokee Indians ("EBCI") or any entity, division, program, agency or enterprise of the EBCI with authority and responsibility for the protection of children living on tribal trust land.~~

35A-1385. Jurisdiction of Proceedings.

(a) The Cherokee Court shall have jurisdiction of proceedings arising under this Article pursuant to section 1-2(b) of the Cherokee Code and the Cherokee Court appointing a guardian pursuant to this Article retains continuing jurisdiction of the matter.

(b) When a child is the subject of existing C.C. Chapter 7B child maltreatment proceedings with the court, no petition under this Chapter shall be heard and must be dismissed, jurisdiction under this Article may be transferred as necessary and when in the best interests of the child.

(c) Nothing in this Article shall be deemed to conflict in any way with existing C.C. Chapter 7B child maltreatment proceedings and; however under C.C. 7B-600 and N.C.G.S. 1A-1, Rule 17, the court overseeing such proceedings may appoint a kinship guardian pursuant to a petition filed under this Article and/or may join the petitioner in such child maltreatment proceedings as a permanent placement for the child in its discretion and when it is in the child's best interest.

35A-1386. Petition for and Appointment of Kinship Guardianship Who May File a Petition.

(a) A petition seeking the appointment of a kinship guardian may only be filed if a Parent has not abandoned the child, as defined in C.C. 35A-1384(a), and may only be filed by:

- (1) A Caregiver with whom the child as resided without contact and without financial support from either parent of the child for sixty (60) consecutive days; or
- (2) ~~A caregiver authorized by a Caregiver Affidavit and with whom the child has resided for at least thirty (30) consecutive days prior to the filing of the petition; and~~
- (23) A person designated by a parent in a verified consent to kinship guardianship that indicates on the face of the consent document that the parent signing understands:
 - i. the purpose and effect of the guardianship;
 - ii. that the parent will be served with notice of hearing when any subsequent petition for kinship guardianship is filed with the court; and
 - iii. that the parent may appear in court contest the guardianship.

~~who has never been convicted of any sexual offense in any jurisdiction.~~

35A-1387. Contents of Petition

(~~a~~**b**) A petition seeking the appointment of a kinship guardian shall be verified by the petitioner and ~~establish~~**allege** the following with respect to the child:

- (1) ~~That the child has resided with the Petitioner for at least sixty (60) consecutive days without contact or financial assistance from either parent of the child constituting a rebuttable presumption that the parents have acted inconsistently with the constitutionally protected rights of the parents.~~
- (2) ~~The date and place of birth of the child, if known, and if not known, the reason for the lack of knowledge the approximate age and place of birth to the best of Petitioner's knowledge;~~
- (3) The last known physical residence of the child and last known caretaker of the child if not the parent.
- (~~4~~**2**) The names and last known mailing address and physical residence of the child's parents, if different;
- (~~5~~**3**) The full name, mailing address and physical residence of the petitioner;
- (~~6~~**4**) The nature of the relationship between the petitioner and the child and the nature of the relationship between the petitioner and the parents, if any;
- (~~7~~**5**) The length of time the child has resided~~child's length of residence~~ with the petitioner;
- ~~—(8) The names and last known addresses of persons having legal custody, including visitation rights of the child, in addition to the parents if known;~~
- (~~9~~**7**) The existence of any known legal proceedings involving the child or any child welfare agency involvement with the child in any jurisdiction;
- ~~(8) — A statement that the petitioner meets either of the requirements under Subsection (a);~~
- (~~10~~**9**) A statement that the petitioner agrees to accept the duties and responsibilities of guardianship;
- ~~(10) — A statement that the petitioner or any person residing in the home has never been convicted of a sexual offense in any jurisdiction.~~
- (~~11~~**11**) Other facts that the petitioner can verify from personal knowledge in support of the guardianship sought.

35A-138~~87~~. Service of Petition; ~~summons and~~ notice of hearing; parties.

(a) ~~At~~**Upon** the time of filing of the petition, the petitioner shall obtain a court date for hearing the petition, which date shall be no less than thirty and no more than sixty (60) days from the date of filing the petition. initiate service of notice of the filing, no later than five days

~~upon the filing of the petition. The notice shall be directed to the following persons or agency, not otherwise a party, who shall be named as respondents~~

(b) The petition and notice of hearing shall be served together upon:

~~(1) The child welfare agency, if there is any pending matter relating to the maltreatment of the child alleged in the petition;~~

~~(12)~~ The parents of the child and

(2) Any person having legal custody, including visitation rights, of the child pursuant to a court order if:

~~(A) The parent's rights concerning the child have not been terminated or suspended; or~~

~~(B) A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, except that:~~

~~(i) Notice need not be served upon a man who has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the minor, a man whose parental rights have been legally terminated or who has been judicially determined not to be the minor's parent, a man who has failed to acknowledge paternity, or, provided the petition is filed within three months of the birth of the minor, a man who not legitimized the child; or~~

~~(C) The parents have not abandoned the child as defined in C.C. 35A-1384(a).~~

(3) The child if eleven (11) years of age or older.

~~(c) The notice shall notify the respondents to file a written answer within 14 days after service of the notice and petition. Service of the notice and petition shall be completed as provided under the procedures established by N.C.G.S. 1A-1, Rule 4(j). For purposes of this Chapter, a minor parent of the child shall not be deemed to be under a disability based on their status as a minor.~~

(de) Service of process required by this Section shall be made in accordance with NCRCP Rule 4(j). Upon proper documentation in the court file, a parent or other person for whom the petitioner cannot locate for proper service may be served by publication under North Carolina Rules of Civil Procedure.

(e) The persons served under this Section shall have the right to file a response to the court and may appear at the hearing to provide testimony as a party to the action.

~~The summons shall be issued by the Court pursuant to N.C.G.S. 1A-1, Rule 4 except as provided in subsections (a) and (b) of this section and shall include:~~

~~—— (1) — The name of the child;~~

~~(2) — Notice that a written answer to the petition must be filed with the clerk within 14 days after service of the summons, or if not, the petitioner may be appointed guardianship;~~

~~(3) — If a guardian ad litem or attorney advocate has been appointed for the child pursuant to C.C. 35A-1389, C.C. 35A-601 or N.C.G.S. 1A-1, Rule 17 and has not been relieved of responsibility or if the court appoints a guardian ad litem attorney advocate for the child after the petition is filed, a copy of all pleadings and other papers required to be served shall be served on the child's guardian ad litem advocate pursuant to procedures established under N.C.G.S. 1A-1, Rule 5.~~

~~(4) — Notice of the date, time, and place of the hearing which shall be set no later than 30 days from the date of return of service of the summons; and~~

~~(5) — Notice of the purpose of the hearing and notice that the parents may attend the hearing.~~

~~(d) If the child is the subject of C.C. Chapter 7B child maltreatment proceedings and the petitioner has requested to join the proceedings, the petitioner shall be joined to those proceedings pursuant to C.C. 7B-600 in the court's discretion and when the court finds it is in the child's best interest.~~

35A-1389. Hearing; Elements of Proof; Burden of Proof; Judgment; Child Support.

(a) (a) Upon hearing, the court may shall make the appointment of kinship guardianship if it finds by a preponderance of the evidence the following:

- (1) As of the date of the filing of the petition the child has resided with petitioner for sixty (60) consecutive days without contact or financial support from either parent or the petitioner has attached to the petition a verified Consent to Kinship Guardianship signed by a parent; and
- (2) The parents and any other persons with legal custody of the child have been properly served as documented in the court's file; and
- (3) The appointment is in the best interest of the child.

~~A person who meets the requirements of subsection under C.C. 35A-1386(a) seeks the appointment;~~

~~(2) Under the requirements of this Article, service of summons and notice of hearing have been properly served;~~

~~(3) Absent a Caregiver Affidavit, the child has resided with petitioner for at least 60 consecutive days without the presence of the parent, or where a validly executed Caregiver Affidavit exists, the child has resided with petitioner for at least 30 consecutive days;~~

~~(4) The appointment is in the best interests of the child.~~

(b) If all the requirements of ~~(a)(1),(2) and (3)~~~~this section~~ are not met, the court ~~must~~ dismiss the proceedings ~~or make any other disposition of the matter that the court finds to be in the best interests of the child.~~

(c) If the court finds that the child has been residing with the petitioner for sixty (60) consecutive days without contact or financial support from the parent and that parent objects to the kinship guardianship, such finding shall establish a rebuttable presumption that the parents have acted inconsistently with their constitutionally protected rights as parents and the parents objecting may rebut the presumption in which case the court must dismiss the petition. But if the presumption is not rebutted then the court may enter any other judgment for guardianship as may be in the best interest of the child~~The burden of proof shall be by a preponderance of the evidence.~~

(d) As part of a judgment entered pursuant to this Article, the court may order a parent to pay the reasonable costs of support and maintenance of the child. The court may use the child support guidelines set forth in Chapter 110 of the Cherokee Code to calculate a reasonable payment.

(e) The court may order visitation between a parent and child to either maintain or rebuild a parent-child relationship if the visitation is found to be in the best interests of the child.

35A-13~~90~~89. Guardian ad litem; appointment.

~~((a) In a proceeding under to appoint a kinship guardian pursuant to this Article, the court may appoint a guardian ad litem and/or attorney advocate for the child upon the motion of a party or solely in the court's discretion. The court shall appoint a guardian ad litem if a parent of the child is participating in the proceeding and objects to the appointment requested.~~

~~(b) In a proceeding in which a parent of the child has petitioned for the revocation of a kinship guardianship established pursuant to this Article and the kinship guardian objects to the revocation, the court shall appoint a guardian ad litem for the child.~~

~~(be)~~ The court may order all or some of the parties to a proceeding to pay a reasonable fee of a guardian ad litem ~~attorney advocate~~. If all ~~_~~ of the parties are indigent, the court

may award a reasonable fee to the guardian ad litem ~~attorney-advocate~~ to be paid out of funds of the court.

35A-139~~10~~¹⁰. Guardian ad litem; ~~authority~~^{powers} and duties.

~~In addition to any requirements under N.C.G.S. 1A-1, Rule 17, a~~ A guardian ad litem appointed by the court in a proceeding pursuant to this Article shall:

(a) In connection with a petition for kinship guardianship, ~~make a diligent investigation of the circumstances surrounding the petition, including visiting the child in the home, interviewing the person proposed as kinship guardian and interviewing the parents of the child if available~~ and shall make recommendations to the court concerning what is in the best interests of the child as between the plaintiff and anyone, including the parents, with legal custody of the child as well as the child's wishes if the child can express such;

~~(b) In connection with a petition or motion for revocation of a kinship guardianship, recommend an appropriate transition plan in the event the kinship guardianship is revoked; and~~

~~(c) At a hearing held in connection with proceedings described in Subsections (a) or (b) of this section, the guardian ad litem shall furnish a report to the court that includes:~~

- ~~(1) — The results of the investigation performed pursuant to subsection (a);~~
- ~~(2) — Information concerning childhood indicators which shall include but are not limited to:
 - ~~(A) — School attendance;~~
 - ~~(B) — Changes in academic performance as evidenced by a deviation in the type of grades received; and~~
 - ~~(C) — Any other behaviors of the child that are notable or that may require services;~~~~
- ~~(3) — The child's position on the requested relief; and~~
- ~~(4) — Considerations of best interests of the child.~~

35A-139~~21~~²¹. Objection by child.

In a proceeding for appointment of a kinship guardian pursuant to this Article the court shall consider an objection, either written or oral from a child who has reached his eleventh birthday in the proceeding before the person is awarded appointment as kinship guardian. The Court in considering the objection must weigh the objection in view of all other evidence and if necessary may continue the hearing and appoint a guardian ad litem

if one has not been appointed to investigate the objection and report back to the Court. Nothing in this section shall be construed to conflict with N.C.G.S. 1A-1, Rule 17.

35A-139~~31~~³². Revocation of kinship guardianship; notice; parties.

(a) Any person, including a child who has reached his eleventh birthday, may move for revocation of a kinship guardianship ~~created pursuant to this Article~~. The person requesting revocation shall attach to the motion for revocation a transition plan proposed to facilitate the reintegration of the child into the home of a parent or a new guardian, ~~caregiver~~ or custodian. A transition plan shall take into consideration the child's age, development and any bond with the current kinship guardian, parent and/or prospective guardian, caregiver or custodian.

~~((b) The motion for revocation and the date of hearing on the motion shall be served on the parties required to be served in section 1388(b) of this Article. In accordance with the requirements of C.C. 35A-1387, service, summons and notice shall be performed on all necessary parties pursuant to that section, including persons incorporated in the transition plan who were not a party to the original kinship guardianship proceedings.~~

(c) If the court finds that a preponderance of the evidence proves a substantial change in circumstances of the parent and the parent's ability to care for the child or that the guardian is unable or unwilling to care for the child and the revocation is in the best interests of the child, it shall grant the motion, ~~and:~~

~~—— (1) ——— Adopt a transition plan proposed by a party or the guardian ad litem;~~

~~—— (2) ——— Order its own transition plan; or~~

~~((3) ——— Order the parties to develop a transition plan by consensus if they will agree to do so.~~

(d) If the motion to revoke the guardianship is granted and there is no suitable substitute guardian or custody to the parents is not in the best interest of the child, no transition plan is in place and the child was involved in placement proceedings due to removal from the parent pursuant to C.C. Chapter 7B during the original proceedings, and kinship guardianship was awarded under this Article as the permanent placement of the child in accordance with C.C. 7B-906(i), when such kinship guardianship is revoked or terminated, the court shall make an order for child protective custody, pursuant to 7B-503 and 7B-504, directing the Tribe's Department of Human Services to assume custody of the child and initiate placement and hearing procedures under C.C. Chapter 7B.

35A-139~~42~~⁴³. Rights and duties of a kinship guardian.

(a) A kinship guardian appointed for a child pursuant to this Article has the legal rights and duties of a parent, including the protection, education, care, custody, control of and decision making authority for the child, ~~but does not have~~except the right to consent to adoption of the child and is required to obey any court orders that specify parental access and visitation with a parent or other legal~~except for parental rights and duties that the court orders retained by a parent.~~

(b) Unless otherwise ordered by the court, a kinship guardian appointed pursuant to this Article has authority to make all decisions regarding visitation between a parent and the child.

(c) A certified copy of the court order appointing a kinship guardian pursuant to this Article shall be satisfactory proof of the authority of the guardian, and letters of guardianship need not be issued unless requested by the Guardian.

(d) Unless otherwise waived or ordered by the court in its discretion, a kinship guardian appointed under this Subsection is subject to the returns and accounting requirements of Article 10 of this Chapter.

35A-139~~54~~. Caregiver authorization affidavit.

(a) A parent with legal custody of a child who executes a caregiver authorization affidavit in the form contained in Subsection (h) of this section and who subscribes and swears to it before a notary public authorizes the named caregiver to enroll the named child in school and consents to medical care for the child,~~authorizes a caregiver to act as a person in place of the parent, also known as in loco parentis, for the child until guardianship or another permanent placement can be established, or the child returns to the parent.~~

~~(b) A caregiver who is a relative of the child, who executes a caregiver's authorization affidavit substantially in the form set forth in Subsection (j) of this section and who subscribes and swears to the affidavit before a notary public, has the same authority to care for the child as a guardian appointed pursuant to this Article.~~

~~(1) — This affidavit shall constitute a sufficient basis for a determination of residency of the child, without the requirement of a guardianship or other custody order, as long as the requirements of N.C.G.S. 115C-366(a3) are fulfilled.~~

~~(be)~~ A caregiver's authorization affidavit executed pursuant to this section is valid until revoked by written revocation by the parent authorizing the original or until such authorization is superseded by a ~~nother permanent placement of the child by the C~~ourt order granting custody or, ~~including~~ kinship guardianship under this Article.

~~(cd)~~ No person who acts in good faith reliance on a caregiver's authorization affidavit to provide medical, dental or mental health care to a child without actual knowledge of facts contrary to those stated in the affidavit is subject to criminal culpability, civil liability or professional disciplinary action if the affidavit complies with the requirements of this

section. The foregoing ~~protectionsexclusions~~ apply even though a parent having parental rights or person having legal custody of the child has contrary wishes as long as the provider of the care has no actual knowledge of the contrary wishes.

(~~de~~) A person who relies upon a caregiver's authorization affidavit is under no duty to make further inquiry or investigation.

(~~ef~~) If a child stops living with the caregiver, the caregiver shall give notice of that fact to the parent(s) of the child and/or the ~~appropriate~~ tribal child welfare agency if parent(s) cannot be contacted, and all those that have been given a copy of the caregiver's authorization affidavit.

(~~fg~~) A caregiver's authorization affidavit is invalid unless it contains the following warning language, also contained ~~statement set out~~ in the statutory form for caregiver's authorization affidavit contained in Subsection (h) of this section, and such language must be in not less than ten-point boldface type, or a reasonable equivalent thereof, enclosed in a text box: –WARNING: Do not sign this form if any of the statements above are false or incorrect. If you do, you will be committing a crime punishable by a fine, imprisonment, or both, including repayment of the cost of educating the student and medical costs.

(~~gh~~) The caregiver's authorization affidavit shall be in substantially the following form and is otherwise available from the Clerk at the Cherokee Court: (remainder of this page intentionally left blank)

(h)

Caregiver Authorization Affidavit

Instructions: This signed and completed affidavit is sufficient to authorize the Caregiver to act as a person in the place of the parent for the child. This affidavit must be properly acknowledged by a certified notary public in order to be effective. Use of this affidavit is authorized by Section 35A, Article 22 of the Cherokee Code.

Information About the Child or Children

Child 1: Full Name

Date of Birth

Child 2: Full Name

Date of Birth

Child 3: Full Name

Date of Birth

Information About the Parent or Parents

Mother: Full Name

Date of Birth

<u>Mailing Address</u>	<u>Physical Address (if different)</u>
<u>Father: Full Name</u>	<u>Date of Birth</u>
<u>Mailing Address</u>	<u>Physical Address (if different)</u>
<input type="checkbox"/> <u>After reasonable effort, I could not determine the whereabouts of either parent.</u>	

<u>Information About the Caregiver</u> <u>(The person caring for the child)</u>	
<u>Full Name</u>	<u>Date of Birth</u>
<u>Mailing Address</u>	<u>Physical Address (if different)</u>
<u>Relationship to the Child</u>	

<u>Information About any Co-Caregiver</u> <u>(Optional)</u>	
<u>Full Name</u>	<u>Date of Birth</u>

WARNING

Do not sign this form if any of the statements contained herein are false or incorrect. If you do so, you will be committing a crime punishable by a fine, imprisonment, or both, including repayment of the cost of educating the student.

Parent(s) Signature

I, _____, am the parent having legal custody of the minor child(ren) named above. I hereby agree and authorize the Caregiver named above to enroll the minor child(ren) in school and consent to their medical care. This consent shall be effective from the date of execution until:

(choose just one): ☐ I revoke this document. ☐ The following date: ____ / ____ / 20 ____.

By signing here, I indicate that I have the understanding and capacity to communicate health care decisions and that I am fully informed as to the contents of this document and understand the full import of this grant of powers to the agent named herein.

This, the ____ day of _____, _____.

Signature of Parent

Signature of Parent

Caregiver Signature

I, _____, am willing and able to act in the place of the parent by assuming the status and all obligations, responsibilities, and duties of the parent. I attest that I have not been convicted of any form of child maltreatment as defined in C.C. 7B-101(a)(8) or any form of sexual abuse or offense against a child that would constitute a crime against a child in any jurisdiction. I reside on trust land of the Eastern Band of Cherokee Indians.

If neither parent has signed this form, I was not able, after reasonable efforts, to ascertain the whereabouts of the parents to obtain their authorization. The primary purpose of this Affidavit is not related to the child(ren)'s attendance at a particular school, I have no personal knowledge of any suspension, expulsion, felony conviction or other disciplinary history that would preclude the child(ren) from enrollment. I have been given and accept responsibility for all educational decisions for the student, as defined in N.C.G.S. 115C-366(h)(3) and confirm the qualifications set out in N.C.G.S. 115C-366(a3) establishing the child's residency.

This, the ____ day of _____, _____.

Signature of Caregiver

STATE OF NORTH CAROLINA

COUNTY OF _____

On this ____ day of _____, _____, personally appeared before me the named _____, to me

known and known to me to be the person or people described in and who executed the foregoing instrument and each acknowledges that he/she executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

Notary Signature

Notary Printed Name

NOTICES

1. This Caregiver Authorization Affidavit does not affect the legal rights of the minor child's parents or legal guardian and does not mean that the caregiver has legal custody of the minor child.
2. This Caregiver Authorization Affidavit establishes the authority for the caregiver to act "in loco parentis," or in the place of the parent for the child(ren) named.
3. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:

1. No person who acts in good faith reliance upon this Caregiver Authorization Affidavit to provide medical, dental, or mental health care to a child, without actual knowledge of facts contrary to those stated on the affidavit, is subject to criminal liability or to civil liability to any person, or is subject to professional disciplinary action for such reliance if the applicable portions of the form are completed.
2. This affidavit does not confer dependency for health care coverage purposes.

TO SCHOOL PROVIDERS:

1. This affidavit shall constitute a sufficient basis for a determination of residency and domicile of the minor, without the requirement of a guardianship or other custody order where the requirements of N.C.G.S. 115C-366(a3).

Caregiver Authorization Affidavit

Instructions: This signed and completed affidavit is sufficient to authorize the affiant to act as a person in the place of the parent for the child. This affidavit must be properly acknowledged by a certified notary public in order to be effective. Use of this affidavit is authorized by 35A, Article 22 of the Cherokee Code.

Print clearly:

1. Name of minor child:

(First) _____ (Middle) _____ (Last)

2. Minor child's date of birth: ____/____/____

3. Mother's full name as it appears on a birth certificate or driver's license and any married name or aliases, if different or known:

(First) _____ (Middle) _____ (Last)

4. Mother's home address:

(Street) _____ (Apt) _____ (City) _____ (State)

(Zip Code)

5. Mother's mailing address, if different from the home address:

(Street) _____ (Apt) _____ (City) _____ (State)

(Zip Code)

6. Mother's date of birth: ____/____/____

7. Check all that apply to Mother:

☐ I am the parent of the minor child.

☐ I reside on trust land of the Eastern Band of Cherokee Indians.

☐ I intend and authorize the caregiver(s) named below to have the legal right to care for and make any and all decisions regarding my child named above as if those decisions were made by me.

☐ I intend and authorize the child to reside with the caregiver(s) named below.

☐ I intend and authorize the caregiver(s) named below to care for and make educational and health decisions only for my child named above.

8. Father's full name as it appears on a birth certificate or driver's license and any aliases, if known:

(First) _____ (Middle) _____ (Last)

9. Father's home address:

(Street) _____ (Apt) _____ (City) _____ (State)
-(Zip Code)

10. Father's mailing address, if different from the home address:

(Street) _____ (Apt) _____ (City) _____ (State)
-(Zip Code)

11. Father's date of birth: ____/____/____

12. Check all that apply to Father:

☐ I am the parent of the minor child and have acknowledged paternity.

☐ I reside on trust land of the Eastern Band of Cherokee Indians.

☐ I intend and authorize the caregiver(s) named below to have the legal right to care for and make any and all decisions regarding my child named above as if those decisions were made by me.

☐ I intend and authorize the child to reside with the caregiver(s) named below.

☐ I intend and authorize the caregiver(s) named below to care for and make educational and health decisions only for my child named above.

~~13. Caregiver's full name as it appears on a birth certificate or driver's license and any married name or aliases, if different or known:~~

~~_____~~
~~_____~~
~~(First) _____ (Middle) _____ (Last)~~

~~14. Caregiver's date of birth: ____/____/____~~

~~15. Caregiver's home address:~~

~~_____~~
~~_____~~
~~(Street) _____ (Apt) _____ (City) _____ (State)~~
~~-(Zip Code)~~

~~16. Caregiver's mailing address, if different from the home address:~~

~~_____~~
~~_____~~
~~(Street) _____ (Apt) _____ (City) _____ (State)~~
~~-(Zip Code)~~

~~17. Check all that apply to Caregiver:~~

- ~~☐ I am willing and able to act in the place of the parent by assuming the status and all obligations, responsibilities and duties of the parent.~~
- ~~☐ I reside on trust land of the Eastern Band of Cherokee Indians.~~
- ~~☐ If either parent's whereabouts were unknown at the time this affidavit was executed, I attempted to ascertain the whereabouts of the parent to obtain their authorization.~~

~~18. If Caregiver is married and/or resides with another adult who will also serve as a caregiver to the child named above ("Co-caregiver"), such Co-caregiver's full name as it appears on a birth certificate or driver's license and any married name or aliases, if different or known:~~

~~_____~~
~~_____~~
~~(First) _____ (Middle) _____ (Last)~~

~~19. Co-caregiver's date of birth: ____/____/____~~

~~20. Check all that apply to Co-caregiver:~~

- ~~☐ I am willing and able to act as an additional caregiver by assuming the status and all obligations, responsibilities and duties of the parent.~~

☐ ~~I reside on trust land of the Eastern Band of Cherokee Indians.~~

☐ ~~If either parent's whereabouts were unknown at the time this affidavit was executed, I attempted to ascertain the whereabouts of the parent to obtain their authorization.~~

~~21. The undersigned caregiver attests that the primary purpose of this Affidavit is not related to the child's attendance at a particular school within the Caregiver's domiciliary local school administrative unit.~~

~~22. The undersigned caregiver attests that they do not have personal knowledge of any suspension, expulsion, felony conviction or other disciplinary history of the child that would preclude eligibility for enrollment.~~

~~23. The undersigned caregiver attests that they been given and accept responsibility for all educational decisions for the student, as defined in N.C.G.S. 115C-366(h)(3) and confirms the qualifications set out in N.C.G.S. 115C-366(a3) establishing the child's residency.~~

~~24. The undersigned caregiver attests that they have not been convicted of any form of child maltreatment as defined in C.C. 7B-101(a)(8) or any form of sexual abuse or offense against a child that would constitute a crime against a child in any jurisdiction.~~

~~**NOTE TO AFFIANTS:** A parent's consent is not required where their parental rights have been terminated by court order or where their paternity has not been acknowledged. This Affidavit is only effective for the child named above.~~

WARNING: Do not sign this form if any of the statements above are false or incorrect or you will be committing a crime punishable by a fine, imprisonment or both, including repayment of the cost of educating the student.

~~I declare under penalty of perjury under the laws of the Eastern Band of Cherokee Indians that the foregoing is true and correct.~~

Signed: _____

Mother's Signature

Signed: _____

Father's Signature

Signed: _____

Caregiver's Signature

Signed: _____

Co-Caregiver's Signature

NOTARY PUBLIC ACKNOWLEDGEMENT

The foregoing affidavit was subscribed, sworn to and acknowledged before me this ____
day of _____, 20____, by _____.

My commission expires: _____.

(SEAL)

Notary Public

(Notices and Additional Information on next page)

Notices:

1. The Caregiver Authorization Affidavit does not affect the legal rights of the minor child's parents or legal guardian and does not mean that the caregiver has legal custody of the minor child.
2. The Caregiver Authorization Affidavit establishes the authority for the caregiver to act "in loco parentis", in the place of the parent, for the child.
3. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

Additional Information:

~~1. If the child stops living with the caregiver(s), the caregiver(s) is required to notify the parent(s) of the child and/or the tribal child welfare agency if the parent(s) cannot be contacted.~~

~~2. If the child stops living with the caregiver(s), the caregiver(s) must also notify any school, health care provider, mental health care provider, health insurer or other person to whom a Caregiver Authorization Affidavit was given.~~

~~TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:~~

~~1. No person who acts in good faith reliance upon a caregiver's authorization affidavit to provide medical, dental or mental health care, without actual knowledge of facts contrary to those stated on the affidavit, is subject to criminal liability or to civil liability to any person, or is subject to professional disciplinary action, for such reliance if the applicable portions of the form are completed.~~

~~2. This affidavit does not confer dependency for health care coverage purposes.~~

~~TO SCHOOL PROVIDERS:~~

~~1. This affidavit shall constitute a sufficient basis for a determination of residency and domicile of the minor, without the requirement of a guardianship or other custody order, where the requirements of N.C.G.S. 115C-366(a3) are met.~~

BE IT FINALLY ORDAINED that this ordinance shall be effective upon ratification by the Principal Chief, and all ordinances and resolutions that are inconsistent with this ordinance are rescinded.

Submitted by: Office the Attorney General