

COQUILLE INDIAN TRIBAL CODE

Chapter 743

Part 7 – Domestic Relations

Parent and Child Relationship

Coquille Indian Tribe
Chapter 743
Parent and Child Relationship

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743.010 Purpose and Intent.

1. Pursuant to the Coquille Indian Tribe Constitution, Article VI, section 1, the Tribal Council has legislative authority to establish Tribal laws. In order to protect, preserve and promote the health and welfare of the Tribe and its members, the Tribal Council has established this Parent and Child Relationship Ordinance.

2. The Tribal Council finds that custody, support, and care of children of Tribal members are crucial to preserve the Tribe's integrity, cohesiveness and continuity. The Tribe finds that it is essential to the political integrity of the Tribe to have the ability to determine the parentage, custody, care, visitation, and support of children of Tribal members in an orderly and legally binding manner. The Tribe further finds that this Ordinance deals with purely intramural relationships among persons who are recognized members of the Tribe's community.

3. Definitions

a. **Address** means a residence, mailing or contact address in the same state or reservation as the person's home.

b. **Psychological Parent** means any person, including but not limited to a related or nonrelated foster parent, stepparent, grandparent or relative by blood or marriage, who has established emotional ties creating a child-parent relationship or an ongoing personal relationship with a child.

c. **Child-parent relationship** means a relationship that exists or did exist, in whole or in part, within the six months preceding the filing of an action under this section, and in which relationship a person having physical custody of a child or residing in the same household as the child supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessities and provided the child with necessary care, education and discipline, and which relationship continued on a day-to-day basis, through interaction, companionship, interplay and mutuality, that fulfilled the child's psychological needs for a parent as well as the child's physical needs. However, a relationship between a child and a person who is the nonrelated foster parent of the child is not a child-parent relationship under this section unless the relationship continued over a period exceeding 12 months.

d. **Tribe** means the Coquille Indian Tribe.

e. **Tribal Court** means the Coquille Indian Tribal Court.

f. **Tribal member** means a person who is an enrolled member of the Coquille Indian Tribe.

g. **Parent** means the biological or adoptive parent of a child.

h. **Coquille Indian Reservation** means those lands held in trust by the Federal government for the benefit of the Tribe

i. **Ongoing personal relationship** means a relationship with substantial continuity for at least one year, through interaction, companionship, interplay and mutuality.

j. **Foreign Spousal Support and Child Support Order** means any judgment, decree or order for spousal support or child support of any tribal or state court.

k. **Child** means any person under 18 years of age that is not married or otherwise emancipated.

743.020 Jurisdiction and Background

The Tribe has jurisdiction to determine child support, child custody, and visitation when at least one of the parties to the marriage is a Tribal member or when a child is a member of the Tribe. The Tribal Court has jurisdiction to hear all child support, visitation, filiation and custody proceedings, as granted by the Coquille Indian Tribal Code Chapter 610.

Section 1 Parenting Plans and Visitation

743.100 Best Interest of the Child

Parents have responsibility to make decisions and perform other parental functions for the benefit of their minor children. In any proceeding between parents under this Ordinance, the best interest of the child shall be the standard that the Tribal Court shall apply to determine and allocate parental responsibilities. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, cultural and Tribal ties, health and stability, and physical well-being. Furthermore, the best interests of the child are ordinarily served when the existing pattern of interaction between the parent and the child is altered only to the extent necessary to reflect the changed relationship of the parent and child, or to protect the child from physical, mental, or emotional harm.

743.110 Parenting Plan

1. In any proceeding under this chapter, the Tribal Court may enter a Parenting Plan if it finds that one of the parties is an enrolled member of the Tribe.
2. Neither parent is entitled to preference in the awarding of custody on the basis of their gender or gender role.
3. If the Tribal Court finds that a parent or child has been the victim of domestic violence, the Tribal Court shall enter an order keeping the address and telephone number of the victim confidential during the proceedings.
4. The objective of any proposed order or parenting plan shall be:
 - A. To provide for the child's care and maintain the child's emotional well-being;
 - B. To provide for the child's physical care and to maintain the child's emotional stability;
 - C. To provide for the child's changing needs as the child grows;
 - D. To promote and preserve the child's Indian heritage and to provide for the maintenance of the child's tribal affiliation;
 - E. To set forth the authority and responsibilities of each parent;
 - F. To minimize the child's exposure to harmful parental conflict;
 - G. To encourage parents to meet their responsibilities through the parenting plan rather than by relying on Tribal Court intervention; and

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- H. To otherwise protect the best interests of the child consistent with the policy expressed in 743.100.
5. The contents of any proposed or ordered parenting plan shall include:
- A. Dispute Resolution. A process for resolving disputes, other than Tribal Court action, shall be provided unless it is beyond the financial means of the parties, or precluded or limited by the Tribal Court as provided herein. The dispute resolution process may include Peacegiving, mediation, or any other method agreed upon by the parties. In the dispute resolution process:
 - i. Preference shall be given to carrying out the parenting plan;
 - ii. The parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to child support, unless there is an emergency;
 - iii. If the Tribal Court finds that a parent has used or frustrated the dispute resolution process without good reason, the Tribal Court may impose financial sanctions against that parent; and
 - iv. Both parents have the right of court review of the dispute resolution process.
6. Decision Making Authority. The parenting plan shall allocate decision-making authority to one or both parents regarding the children's education, health care, and religious or spiritual upbringing. The plan shall state that:
- A. Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent, including emergency decisions affecting the health and safety of the child; and
 - B. When mutual decision-making is designated but cannot be achieved, the parents shall make a good faith effort to resolve the issue through the dispute resolution process.
7. Residential Provisions. The residential schedule shall designate in which parent's home each child shall reside on given days of the year, including provisions for holidays, birthdays, vacations and other special occasions.
8. If a parent fails to comply with a provision of the parenting plan, the other parent's obligations under the parenting plan are not affected.
9. The Tribal Court may authorize and approve the utilization of a uniform parenting plan form for all proceedings under this Chapter.

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10. Restrictions in Parenting Plans. The Tribal Court may restrict or limit any provision of a parenting plan based on factors or conduct that the Court finds by a preponderance of the evidence is adverse to the best interests of the child, including:
- A. Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions;
 - B. Physical, sexual or a pattern of emotional abuse of a child;
 - C. A history of one or more acts of domestic violence;
 - D. An assault or sexual assault that causes grievous bodily harm or the reasonable fear of such harm;
 - E. Neglect or substantial non-performance of parenting functions;
 - F. Long term emotional or physical impairment that interferes with the parent's performance of parenting functions;
 - G. Long term impairment resulting from drug, alcohol or other substance abuse that interferes with the performance of parenting functions;
 - H. Abusive use of conflict by the parent that creates the danger of serious damage to the child's psychological development;
 - I. Withholding from the other parent access to the child for a protracted period without good cause; or
 - J. Such other factors as the Tribal Court expressly finds adverse to the best interests of the child.
11. If a party offers evidence of abuse, neglect or domestic violence, the Court shall schedule a separate hearing to consider such evidence. Prior to the hearing, the Court shall provide confidential notice to the parties that accusations of abuse, neglect, or domestic violence have been raised. At the hearing, the accused party may offer evidence of rehabilitation or other circumstances to rebut the presumption that placement with that party is not in the best interests of the child. If the accused party fails to appear or does not offer evidence, the Court may only make a finding of abuse, neglect, or domestic violence by clear and convincing evidence.
12. If the Court makes a finding of abuse, neglect, domestic violence, or substance abuse by either or both parents, the Court may recommend that the parties seek appropriate treatment, services or training.
13. If the parents are unable to reach agreement on the terms of the parenting plan and the Tribal Court determines that it needs additional information before ordering a parenting plan, the Tribal Court may:

- A. Interview the child in chambers to ascertain the child's needs and desires. The Tribal Court may permit the Guardian Ad Litem to be present at the interview. The Tribal Court shall cause a record of the interview to be made and to be made part of the record in the case; and/or
 - B. Seek the advice of the Tribal Social Services Department. Social Services shall evaluate the parents' ability to provide adequate food, clothing, shelter, medical care, love and emotional support, and day to day supervision. The evaluation should also report on circumstances indicating any conduct outlined in 743.110(10). The evaluation given shall be in writing and shall be made available by the Tribal Court to counsel upon request. Counsel may call for cross-examination of any persons consulted by the Tribal Court.
14. In ordering a permanent parenting plan, the Tribal Court shall not draw any presumptions from the provisions of a temporary parenting plan or separation agreement.

743.150 Temporary or Interim Parenting Plan

Unless it is shown to be detrimental to the welfare of the child, the child shall have, to the greatest degree practical, equal access to both parents during the time that the Tribal Court considers a parenting plan under 743.110.

743.160 Visitation Rights – Psychological Parent

- 1. The Tribal Court may order visitation rights for a person other than a parent when consistent with community standards and in the best interests of the child.
- 2. A person who meets the definition of Psychological Parent may petition the Tribal Court for visitation rights at any time.
- 3. The Tribal Court may modify an order granting or denying visitation rights at any time, in accordance with 743.200.

743.180 Modification of Parenting Plan or Visitation

- 1. A parenting plan or visitation with the child may be modified if the Tribal Court determines that a change in circumstances requires the modification of the award and the modification is in the best interests of the child. If a parent or psychological parent opposes the modification of the parenting plan or visitation with the child and the modification is granted, the Tribal Court shall enter on the record its reason for the modification.

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2. In a proceeding involving the modification of a parenting plan or visitation with a child, a finding by clear and convincing evidence that a crime involving domestic violence has occurred since the last parenting plan or visitation determination is a finding of change of circumstances under 743.180(1).

Section 2 Child Custody

743.200 Custody Action

In any action for annulment, legal separation, or divorce, the Tribal Court shall have authority to determine the custody of any child of the marriage, any child born out of wedlock, or any other child in the custody of either party.

743.240 Factors in Determining Custody

1. Whenever legal or physical custody is sought, the court shall consider the following relevant factors:
 - A. The ability of the parents to cooperate in the rearing of the child(ren);
 - B. The reasonable preference of the child if the child is of a sufficient age;
 - C. The interaction and relationship of the child with a parent or parents, siblings, and any other person who may significantly affect the child's best interests;
 - D. The ability of the child to have a stable, satisfactory living environment;
 - E. The stability of the proposed custodial home;
 - F. The capacity and disposition of the parties to give the child love, affection, guidance, and to continue educating and raising the child in the child's culture and religion, if any; and,
 - G. The capacity and disposition of the parties to help the child to thrive.

743.270 Visitation Rights

1. In all divorce, legal separation, or annulment proceedings, the court may grant visitation rights to the non-custodial parent.
2. A parent's failure to pay support because of the parent's inability to do so shall not be sufficient cause for denial of visitation, unless such inability is willful.
3. The custodial parent shall present the child for visitation by the non-custodial parent, as such time as the court directs or was agreed upon.
4. Proof of an unwarranted denial of or interference with duly established visitation may constitute contempt of court and may be cause for reversal of custody or judicial sanctions.

5. Supervised visits may be ordered if warranted by the court.

743.280 Guardian Ad Litem

At any stage of the proceedings conducted under this Ordinance, the Court may appoint a spokesperson 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. This person shall be subject to the Child Protection Ordinance, CITC Chapter 185.

Section 3 Child Support

743.300 Child Support Factors

1. In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child, born to or adopted by the parents, to pay an amount reasonable and necessary for his/her support, after considering all relevant factors, including:

- A. The financial resources and needs of the child;
- B. The financial resources and needs of the custodial parent;
- C. The standard of living the child would have enjoyed had the marriage not been dissolved;
- D. The physical, emotional, cultural and educational needs of the child; and
- E. The financial resources and needs of the non-custodial parent.

743.320 Child Support Guidelines

1. The court shall enter an award for child support payments in accordance with the provisions of this Section. The court may order either or both parents owing a duty of support to a child to pay an amount of money, which is reasonable or necessary for the child's support.

2. Factors to be considered in calculating child support payments include:

- A. All earnings, income, and resources of the parents, including real and personal property except as expressly excluded by Federal law;
- B. The financial needs and resources, physical and emotional condition, and educational needs of all of the child(ren);
- C. Whether or not the parents have separate households;
- D. Which parent receives the income taxation dependency exemption and what financial benefit the parent receives from it;
- E. The parents' debts owed to private creditors; and,
- F. The parents' earning capacity based on past earnings or lack of earnings.

743.330 Court Findings on Child Support

1. The court shall make written findings concerning the amount of the obligor's income used as the basis for the child support calculation as well as any evidentiary factors affecting the determination of child support.
2. If the court finds that a parent is voluntarily unemployed or underemployed, child support can be calculated based on a determination of imputed income by showing:
 - A. It is temporary and will ultimately lead to an increase in income;
 - B. A bona fide career change outweighs the adverse effect of the parent's diminished income;
 - C. If the court is unable to determine or estimate the earning ability of a parent, the court may calculate child support based on full-time employment of forty (40) hours per week at the federal minimum wage;
 - D. If a parent is a recipient of public assistance or is physically or mentally incapacitated, child support may be reserved.

743.340 Child Support Modifications

1. An order for child support can be modified based on a cost of living change and the adjustment shall specify the cost-of living index to be applied.
2. The court may order an employer or payor of funds to withhold from the obligor's income an additional amount equal to 20 percent of the monthly child support or maintenance obligation until any arrearage is paid.
3. The terms of a child support order can be modified by the party seeking modification upon showing to the court substantial change in circumstances of the party (s) since the date of the support order.
4. The terms of a child support order can be modified no more often than annually.

743.350 Child Support Petition from Tribal Social Services Department

On behalf of a minor child in the custody of the Tribal Social Services Department, the Social Services Department may petition the Tribal Court for an order directing either or both of the child's parents to provide for the child's support. If the Tribal Court is satisfied that just cause exists, the Court shall direct either or both parents to appear at a time set by the Court to show cause why an order of support should not be entered in this matter. This judgment may be enforced by the contempt power of the Court, or by any other means available to the Court.

Section 4 Filiation

743.400 Filiation Proceedings

The Tribal Court shall have the authority to determine the paternity or maternity of any child who is subject to a proceeding under this Ordinance and shall not diminish or alter the legal recognition of the parent and child relationship.

743.410 Presumption of Paternity

1. A man is presumed to be the natural father of a child if:
 - A. He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a Court;
 - B. Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within three hundred (300) days after the termination of cohabitation; or,
 - C. Within one year after the child's birth, he and the child's natural mother have married, or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid.
2. A presumption under this Section may be rebutted in an appropriate action only by clear, cogent, and convincing evidence. The presumption is rebutted by a Court decree establishing paternity of the child by another man.

743.420 Presumption of Maternity

1. A woman is presumed to be the natural mother of a child if she gives birth to the child.
2. A presumption under this Section may be rebutted in an appropriate action only by clear, cogent, and convincing evidence. The presumption is rebutted by a Court decree establishing maternity of the child by another woman.

743.430 Determination of Parent and Child Relationship - Who May Bring Action - When Action May Be Brought

1. Any interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the parent and child relationship.

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2. A person presumed to be a child's parent under 743.410 or 743.420 may bring an action for the purpose of declaring the nonexistence of the parent and child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts.
3. Regardless of its terms, no agreement between an alleged or presumed father and the mother or child, shall bar an action under this Ordinance.
4. If an action under this Ordinance is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and discovery, including the taking of depositions to perpetuate testimony.
5. Actions under this Ordinance may be maintained as to any child, whether born before or after the enactment of this Ordinance.

743.450 Evidence Relating to Filiation

1. Evidence relating to paternity may include:
 - A. Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
 - B. Blood or DNA test results, either voluntary or court-ordered;
 - C. Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the Tribal Court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and
 - D. All other evidence relevant to the issue of paternity of the child.
2. Evidence relating to maternity shall include:
 - A. Blood or DNA test results, either voluntary or court-ordered; and
 - B. All other evidence relevant to the issue of maternity of the child.

743.460 Support Orders -Time Limit, Exception

The Tribal Court may not order payment for support provided or expenses incurred more than five (5) years prior to the commencement a filiation proceeding. Any period of time in which the responsible party has concealed himself or avoided the jurisdiction of the Tribal Court under this Chapter shall not be included within the five (5) year period.

Section 5 Recognition of Foreign Spousal Support and Child Support Orders

743.500 Foreign Spousal Support and Child Support Orders - When Recognized.

1. The Tribal Court shall not recognize and enforce any foreign spousal support or child support order unless the proponent of the foreign spousal support or child support order:

- A. Complies with the procedure set forth in this Ordinance;
- B. Submits proof that the person against whom the foreign spousal support or child support order has been rendered is subject to the jurisdiction of the Tribal Court; and
- C. Submits proof that the foreign spousal support or child support order is based on valid subject matter and personal jurisdiction.

2. The Tribal Court need not recognize a foreign spousal support or child support order if:

- A. The defendant in the proceeding in the foreign court did not receive notice of said proceedings in sufficient time to allow him or her to defend;
- B. The foreign judgment violated the Indian Civil Rights Act of 1968, 25 U.S.C. §§1301 - 1341, the U.S. Constitution, or rights contained in the relevant state or tribal constitution;
- C. The foreign spousal support or child support order was obtained by fraud;
- D. The foreign spousal support or child support order would serve to violate any federal law, tribal law, custom or tradition; or
- E. The cause of action on which the order is based is contrary to the general welfare of the Coquille Indian Tribe or its members.

743.520 Procedure for Recognition and Enforcement of Foreign Spousal Support and Child Support Orders

1. Proper filing of a foreign spousal support or child support order with the Tribal Court shall be accomplished when the proponent has paid all necessary filing fees and delivered to the Tribal Court a certified copy of the foreign judgment, along with a motion requesting that the Tribal Court recognize and enforce the foreign spousal support or child support order.

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2. Upon proper filing of a foreign spousal support or child support order with the Tribal Court, the Tribal Court shall issue a summons directing the defendant to appear on a date not more than thirty (30) days from the date of service and respond to the motion requesting the Tribal Court to recognize and enforce the foreign spousal support or child support order. Such summons shall be served on the defendant in a manner consistent with the Coquille Indian Tribal Code.

3. Failure to appear as directed by the summons or failure to respond to the motion requesting the Tribal Court to recognize and enforce the foreign spousal support or child support order once personal jurisdiction over the defendant has been obtained shall not prevent the Tribal Court from ruling on the motion.

Section 6 Third Party Guardianships

743.600 Procedures for Filing Petition for Legal Guardianship

1. Filing of Petition

A. Any adult may petition for legal guardianship of a child under the jurisdiction of the Tribal Court.

B. A Petition for Legal Guardianship shall be verified under oath by the Petitioner(s) and shall contain the following information:

- i. The full name, residence, date and place of birth, sex of the child, with attached documentary proof of the date and place of the birth of the child;
- ii. The names of the persons with whom the child has lived, the residences at which the child has lived, for the previous year, and the length of time the child has lived with each person and at each residence;
- iii. The names and residences of the child's legal parents, guardians, or custodians. In addition, the names and residences of putative fathers or stepparents, if any;
- iv. Documentary proof of the child's membership status in the Tribe;
- v. The full name, residence, date and place of birth, occupation of the Petitioner(s), statement of relationship to the child, and proof of tribal membership descendancy, if applicable;
- vi. A statement by Petitioner(s) of the desire that a relationship of legal guardian and child be established between Petitioner(s) and the child;
- vii. An agreement, where appropriate, to maintain ties with the extended family and the Tribe; and
- viii. A citation to the specific section of this Ordinance giving the Court jurisdiction of the proceedings.

2. Summons: The parties to a Petition for Legal Guardianship shall be served as provided by law with a certified copy of the Petition, and with a summons that shall contain a statement to the effect that the rights of the parent or parents may be affected, that certain persons are proposed to be appointed as legal guardians in the proceeding, and that if the parent or parents fail to appear at the time and place specified in the summons, the Court may appoint those persons as legal guardians, and take any other action that is authorized by law.

3. Social Services Home Study Report: Upon receipt of a Petition for Legal Guardianship, the Court shall forward a copy of the Petition to the Social Services Department. The Social Services Department shall conduct a home study of any party to be appointed as legal guardian, and shall prepare and submit a written report to the Court within sixty (60) days.

A. The report shall address the suitability and character of the legal guardian(s), including, but not limited to, the financial, physical, and general background of the legal guardian and his/her home.

B. The report shall reflect contact with appropriate agencies and individuals who have relevant knowledge and information.

C. A copy of the report shall be served on Petitioner at the same time it is presented to the Court.

4. Other Agencies or Individuals: The Court may order other agencies or individuals to prepare and file written reports with the Court to aid in the Court's determination on the suitability of the proposed legal guardianship. A copy of all reports shall be served on Petitioner(s) at the same time they are presented to the Court.

743.610 Hearing on Petition for Legal Guardianship

1. A hearing shall be commenced within ninety (90) days of the filing of a Petition for Legal Guardianship, except when extended by Court order, to determine if it is in the child's best interest to be appointed a legal guardian.

A. Petitioner(s) and the Social Services Department representative shall appear personally at the hearing.

B. The Court shall inquire of all persons appearing as to whether the best interests of the child will be promoted by the legal guardianship.

743.650 Term, Rights, and Duties of Legal Guardian

A legal guardian appointed by the Court shall have the custody of, and be responsible for all care of, the child and the care and management of his/her property until the child reaches the age of eighteen (18) years, marries, is emancipated by a court of competent jurisdiction, until the guardianship is no longer in the best interest of the child, or until the legal guardian is legally discharged; provided, however, that the legal guardian shall not have the authority, without express written consent of the Court, to dispose of any real property or Tribal member benefits of the child in any manner. The legal guardian shall have the authority to consent to the medical care and treatment of the child, and to otherwise have those rights of a parent of the child. The legal guardian shall be

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responsible for reporting to the Court on an annual basis, or more often as required by the Court.

743.900 Payment of Costs and Attorney Fees

The Court may consider the behavior of either party as well as the relative financial resources of both parties and order a party to pay a reasonable amount for the cost to the other party for maintaining or defending any proceeding under this Chapter and for reasonable counsel or attorney fees or other professional fees in connection therewith, including sums for legal services rendered and costs.

743.995 Severability

If any provision of this ordinance or the application of any provision of this ordinance to any person or circumstance is held invalid by a court of competent jurisdiction, that provision shall be severed from the ordinance and the remainder of this ordinance shall remain in full force and effect.

743.997 Sovereign Immunity

Nothing in this ordinance shall be construed as a waiver of sovereign immunity of the Tribe or of any Tribal official, agent, employee or representative, which the Tribe expressly asserts.

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History of Amendments to Chapter 743 Parent and Child Relationship:

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